(37,471)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 774

CHARLES P. BULLARD ET AL., PETITIONERS,

vs.

CITY OF CISCO, TEXAS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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BE IT REMEMBERED, That at a term of the District Court of the United States, in the Fifth Circuit thereof, and in and for the Northern District of Texas, at Abilene, begun and holden at Abilene, Texas, on the 26th day of October, A. D. 1931, and which term is still pending, the Honorable James C. Wilson, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

CHARLES P. BULLARD, ET AL.,

versus No. 1008 At Law.

CITY OF CISCO, TEXAS, ET AL.

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2 In the District Court of the United States for the Northern District of Texas, Abilene Division.

Charles P. Bullard, et al., Plaintiffs,
vs. No. 1008, At Law.
City of Cisco, Texas, Defendant.

To the Honorable James C. Wilson, Judge of said Court:

Now come the Plaintiffs, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, and with leave of the Court first had and obtained file this their second amended original petition, and complain of the defendant, City of Cisco, Texas, and for cause of action plaintiffs allege the following:

1.

That the plaintiffs, Charles P. Bullard, John R. Brandon and Robert D. White are each residents and citizens of the State of New York; that the plaintiff Henry E. Poor is a resident and citizen of the State of Ohio. That the defendant City of Cisco, is and at all times mentioned in this petition has been, a municipal corporation organized and existing under the General Laws of the State of Texas, and since July 28, 1919, incorporated and acting under a special charter, having its situs in, and being a citizen of, Eastland County, Texas, which is within the Abilene Division of the District Court of the United States for the Northern District of Texas. The defendant has heretofore been cited and has appeared herein.

That this is a suit between citizens of different states and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of $3,000.00; and further pleading plaintiffs say:

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2.

That on various and sundry dates as follows, the defendant City of Cisco did execute and issue its various and sundry bonds as follows, to-wit:

(a) On, to-wit, March 10, 1920, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds," bearing date of March 10, 1920, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at 6% per annum, payable March 10, 1921, and thereafter semi-annually on September 10 and March 10 in each year, principal payable serially on March 10 from 1923 to 1930, inclusive.

(b) On, to-wit, July 15, 1920, its bonds in the aggregate sum of $100,000.00, denominated "City of

Cisco Paving Fund Bonds, Series 1," bearing date July 15, 1920, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15 in each year, principal payable serially on July 15 from 1930 to 1949, inclusive.

(c) On, to-wit, November 24, 1920, its bonds in the aggregate sum of $300,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds, Series 1," bearing date November 24, 1920, numbered consecutively from 1 to 300 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 24 in each year, principal payable serially on November 24, from 1950 to 1960, inclusive.

(d) On, to-wit, May 10, 1931, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds," bearing date May 10, 1931, numbered consecutively from 1 to 350 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10 in each year, the principal of said bonds payable serially on May 10 from 1941 to 1961, inclusive.

(e) On, to-wit, January 15, 1922, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds, Series 2," bearing date January 15, 1922, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15 in each year, principal payable serially on January 15 from 1933 to 1960, inclusive.

(f) On, to-wit, June 1, 1922, its bonds in the aggregate sum of $100,000.00, denominated "City of

Cisco Funding Bonds, Series of 1922," bearing date June 1, 1922, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 1, in each year, principal payable serially on June 1 from 1943 to 1962, inclusive.

(g) On, to-wit, December 1, 1922, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1922," bearing date December 1, 1922, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15, in each year, principal payable serially on January 15 from 1943 to 1962, inclusive.

(h) On, to-wit, April 20, 1923, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Funding Bonds, Series 1 of 1923," bearing date April 20, 1923, numbered consecutively from 1 to 300, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October in each year, principal payable serially on April 20 from 1943 to 1962, inclusive.

(i) On, to-wit, August 20, 1923, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1923," bearing date August 20, 1923, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 20th day of February and August in each year, principal payable on February 20th from 1944 to 1963, inclusive.

(j) On, to-wit, February 25, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of

Cisco Funding Bonds, Series 1924," bearing date of February 25, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 25th day of February and August in each year, principal payable serially on February 25th from 1949 to 1964, inclusive.

(k) On, to-wit, August 5, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1924," bearing date August 5, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 5 in each year, principal payable serially on February 5th from 1945 to 1964, inclusive.

(l) On, to-wit, December 20, 1924, its bonds in the aggregate sum of $175,000.00, denominated "City of Cisco Funding Bonds," bearing date December 20, 1924, numbered consecutively from 1 to 175, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 20, in each year, principal payable serially on December 20 from 1945 to 1964, inclusive.

(m) On, to-wit, May 10, 1925, its bonds in the aggregate sum of $334,000.00, denominated "City of Cisco Funding Bonds, Series 1925," bearing date May 10, 1925, numbered consecutively from 1 to 334, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10 in each year, principal payable serially on May 10 from 1931 to 1965, inclusive.

(n) On, to-wit, August 1, 1925, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1925," bearing date

August 1, 1925, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 1 in each year, principal payable serially on August 1 from 1946 to 1965, inclusive.

(o) On, to-wit, April 1, 1926, its bonds in the aggregate sum of $165,000.00, denominated "City of Cisco Funding Bonds, Series 1926," bearing date April 1, 1926, numbered consecutively from 1 to 165, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 1 in each year, principal payable serially on April 1 from 1937 to 1956, inclusive.

(p) On, to-wit, September 10, 1926, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1926," bearing date of September 10, 1926, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10 and September 10 in each year, principal payable serially on September 10 from 1947 to 1966, inclusive.

(q) On, to-wit, May 2, 1927, its bonds in the aggregate sum of $225,000.00, denominated "City of Cisco Waterworks Refunding Bonds, Series 1927," bearing date May 2, 1927, numbered consecutively from 1 to 225, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5¾% per annum, payable May and November 2 in each year, principal payable serially on May 2 from 1943 to 1967, inclusive.

(r) On, to-wit, March 10, 1928, its bonds in the aggregate sum of $325,000.00, denominated "City of Cisco Refunding Bonds, Series of 1928," bearing date March 10, 1928, numbered consecutively from 1 to

325 inclusive; in denomination of $1,000.00 each, bearing interest at 5½% per annum, payable March and September 10 in each year, principal payable serially on March 10 from 1939 to 1968, inclusive.

(s) On, to-wit, November 15, 1928, its bonds in the aggregate sum of $226,000.00, denominated "City of Cisco Refunding Bonds, Series 2 of 1928," bearing date November 15, 1928, numbered consecutively from 1 to 226, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5½% per annum, payable May and November 15 in each year, principal payable serially on November 15 from 1944 to 1953, inclusive.

(t) On, to-wit, February 15, 1921, its bonds aggregating $60,000.00, denominated "City of Cisco Sanitarium and Park Bonds," bearing date February 15, 1921, bearing interest at the rate of 5% per annum, payable February and August 15, in each year, in denomination of $1,000.00 each, and being numbered consecutively from 1 to 60, inclusive.

(u) On, to-wit, May 10, 1902, its bonds denominated "City of Cisco Waterworks Bonds," bearing date May 10, 1902, in denomination of $1,000.00 each, and bearing interest at the rate of 5% per annum.

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3.

That at the time of the execution and issuance of the various and sundry bonds aforesaid, coupons were executed and issued by said City to evidence and represent the interest payments on said respective bonds as therein provided. That each and every of said principal bonds, and each and every of said interest coupons, were in form and in fact negotiable instruments, due and payable to bearer. That each and every of said principal bonds, and each and every of

said interest coupons, were duly executed by the Mayor, City Secretary and Treasurer of said City, being thereunto duly authorized in law, by the Constitution of the State of Texas, and by the terms of the Charter of said City. That prior to the sale by said City of any of said principal bonds or interest coupons thereon, same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, and his certificate issued to that effect. That at the time of the authorization, and prior to the issuance or sale of said bonds or interest coupons thereon, the City Commission of said City, as authorized and required by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said city, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective maturities thereof, all of said bonds, with the interest coupons thereto, were sold by said City for a consideration, in each instance such as was required by law, and the consideration, in cash, duly received therefor by said City and the proper officials thereof.

9. That but a small portion of the aforesaid bonds have been retired or paid off, there remaining outstanding at this time of said bonds an aggregate of $4,600,000.00, held and owned by these plaintiffs and sundry other persons to these plaintiffs unknown.

Plaintiffs are the owners of, and hold title to various and sundry of said bonds and interest coupons thereon, including the following.

(a) Of the issue of March 10th, 1920, one hundred five (105) bonds aggregating $105,000.00, and past due interest coupons on bonds of said issue aggregating $15,720.00, two thousand dollars ($2,000.00) of the principal of said bonds being past due, having matured on March 10th, 1930, and said interest coupons thereon having matured $390.00 thereof on March 10, 1929, $2,970.00 thereof on September 10th, 1929, and $3,090.00 thereof on each of the dates March 10, 1930, September 10, 1930, March 10, 1931, and September 10, 1931.

(b) Of the issue of July 15, 1920, thirty-six (36) bonds aggregating $36,000.00, and past due interest coupons on bonds of said issue aggregating $4,650.00, $10,000.00 of the principal of said bonds being past due, having matured $5,000.00 thereof on July 15, 1930, and the remaining $5,000.00 thereof on July 15, 1931, and said interest coupons having matured $690.00 thereof on July 15, 1929, $1,050.00 on each of the dates of January 15th and July 15th, 1930, and $930.00 on each of the dates of January 15th and July 15th, 1931.

(c) Of the issue of November 24th, 1920, sixty-six (66) bonds aggregating $66,000.00, and past due interest coupons thereon aggregating $7,920.00, $180.00 thereof having matured on May 24, 1929, $1,800.00 thereof having matured on November 24th, 1929, and $1,980.00 having matured on each of the dates of May 24th and November 24th, 1930, and May 24th, 1931.

10 (d) Of the issue of May 10th, 1921, two hundred forty-three (243) bonds aggregating $243,000.00, and past due interest coupons thereon aggregating $30,900.00, $2,550.00 thereof having matured on May 10th, 1929, $6,480.00 thereof on Novem-

ber 10th, 1929, and $7,290.00 having matured on each of the dates of May 10th, 1930, November 10th, 1930, and May 10th, 1931.

(e) Of the issue of January 15th, 1922, two hundred sixty-eight (268) bonds aggregating $268,000.00, and past due interest coupons thereon aggregating $39,450.00, $90.00 thereof having matured on January 15, 1929, $7,500.00 thereof having matured on July 15th, 1929, $7,830.00 thereof having matured on January 15th, 1930, and $8,010.00 having matured on each of the dates of July 15th, 1930, January 15th, 1931, and July 15th, 1931.

(f) Of the issue of June 1, 1922, forty-four (44) bonds aggregating $44,000.00, and past due interest coupons aggregating $6,300.00, $1,020.00 thereof having matured on June 1, 1929, and $1,320.00 having matured thereon on each of the dates of December 1, 1929, June 1, 1930, December 1, 1930, and June 1, 1931.

(g) Of the issue of December 1st, 1922, eighty-eight (88) bonds aggregating $88,000.00, and past due interest coupons on bonds of said issue aggregating $13,050.00, $150.00 thereof having matured on January 15th, 1929, $2,340.00 thereof having matured on July 15, 1929, and $2,640.00 having matured thereon on each of the dates of January 15th and July 15th, 1930, and January 15th and July 15th, 1931.

(h) Of the issue of April 20th, 1923, one hundred thirty-two (132) bonds aggregating $132,000.00, and past due interest coupons on bonds of said issue aggregating $16,230.00, $1,050.00 thereof having matured on April 20th, 1929, $3,660.00 thereof having matured on October 20th, 1929, and $3,840.00 having matured thereon on each of the dates of April 20th and October 20th, 1930, and April 20th, 1931.

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(i) Of the issue of August 20, 1923, one hundred three (103) bonds aggregating $103,000.00, and past due interest coupons thereon aggregating $15,180.00, $60.00 thereof having matured on February 20th, 1929, $2,760.00 thereof having matured on August 20th, 1929, and $3,090.00 having matured thereon on each of the dates of February 20th and August 20th, 1930, and February 20th and August 20th, 1931.

(j) Of the issue of February 25th, 1924, one hundred eighteen (118) bonds aggregating $118,000.00, and past due interest coupons thereon aggregating $17,610.00, $3,450.00 thereof having matured on August 25th, 1929, and $3,540.00 having matured thereon on each of the dates of February 25th and August 25th, 1930, and February 25th and August 25th, 1931.

(k) Of the issue of August 5th, 1924, one hundred sixty-eight (168) bonds aggregating $168,000.00, and past due interest coupons on bonds of said issue aggregating $24,990.00, $90.00 thereof having matured on February 5th, 1929, $4,740.00 thereof having matured on August 5th, 1929, and $5,040.00 having matured thereon on February 5th and August 5th, 1930, and February 5th and August 5th, 1931.

(l) Of the issue of December 20th, 1924, eleven (11) bonds aggregating $11,00.000, and past due interest coupons on bonds of said issue aggregating $1,650.00, $330.00 having matured thereon on each of the dates of June 20th and December 20th, 1929, June 20th and December 20th, 1930, and June 20th, 1931.

12 (m) Of the issue of May 10th, 1925, one hundred (100) bonds aggregating $100,000.00, and past due interest coupons thereon aggregating $12,480.00, $510.00 thereon having matured on May 10,

1929, $2,970.00 thereof having matured on November 10th, 1929, and $3,000.00 having matured thereon on each of the dates of May 10th and November 10th, 1930, and May 10th, 1931.

(n) Of the issue of August 1, 1925, seventy-two (72) bonds aggregating $72,000.00, and past due interest coupons thereon aggregating $10,740.00, $30.00 thereof having matured on February 1, 1929, $2,070.00 thereof having matured on August 1, 1929, and $2,-160.00 having matured thereon on each of the dates of February 1 and August 1, 1930, and February 1 and August 1, 1931.

(o) Of the issue of April 1st, 1926, one hundred thirty-seven (137) bonds aggregating $137,000.00, and past due interest coupons thereon aggregating $21,-270.00, $180.00 having matured thereon on each of the dates October 1, 1927, and April 1, and October 1st, 1928, $390.00 thereof having matured on April 1, 1929, $3,900.00 thereof having matured on October 1, 1929, and $4,110.00 having matured thereon on each of the dates of April 1st and October 1st, 1930, and April 1st and October 1st, 1931.

(p) Of the issue of September 10th, 1926, one hundred nine (109) bonds aggregating $109,000.00, and past due interest coupons thereon aggregating $15,-870.00, $3,000.00 thereof having matured on September 10th, 1929, $3,150.00 thereof having matured on March 10th, 1930, and $3,240.00 having matured thereon on each of the dates of September 10th, 1930, and March 10th and September 10th, 1931.

(q) Of the issue of May 2nd, 1927, ninety-eight (98) bonds aggregating $98,000.00, and past due interest coupons thereon aggregating $11,730.00 $143.75 thereof having matured on November 2, 1928, $1,-

581.25 thereof having matured on May 2nd, 1929, $2,415.00 thereof having matured on November 2nd, 1929, and $2,530.00 having matured thereon
13. on each of the dates of May 2, 1930, November 2, 1930, and May 2, 1931.

(r) Of the issue of March 10th, 1928, one hundred eighteen (118) bonds aggregating $118,000.00, and past due interest coupons thereon aggregating $15,895.00, $2,970.00 thereof having matured on September 10th, 1929, $3,190.00 thereof having matured on March 10th, 1930, and $3,245.00 having matured thereon on each of the dates of September 10th, 1930, March 10th, 1931, and September 10th, 1931.

(s) Of the issue of November 15th, 1928, seventy-four (74) bonds aggregating $74,000.00, and past due interest coupons on bonds of said issue aggregating $8,965.00, $2,860.00 thereof having matured on November 15th, 1929, and $2,035.00 having matured thereon on each of the dates of May 15th and November 15th, 1930, and May 15th, 1931.

(t) Of the issue of February 15th, 1921, fifteen (15) bonds aggregating $15,000.00, and past due interest coupons on bonds of said issue aggregating $1,675.00, two thousand dollars ($2,000.00) of the principal of said bonds being past due, having matured on February 15th, 1931, and said interest coupons thereon having matured $225.00 thereof on August 15th, 1929, $375.00 thereof on February 15th, 1930, $375.00 thereof on August 15th, 1930, $375.00 thereof on February 15th, 1931, and $325.00 thereof on August 15th, 1931.

(u) Of the issue of May 10th, 1902, ten (10) bonds aggregating $10,000.00, and past due interest

coupons thereon aggregating $1,000.00, $250.00 having matured thereon on each of the dates of January 1, 1930, July 1, 1930, January 1, 1931, and July 1, 1931.

In addition to the bonds and matured and past due coupons thereon owned and held by the plaintiffs as hereinabove set forth, these plaintiffs own and hold coupons of the following description which were heretofore, in due course, for a valuable consideration, duly assigned and transferred to them:

14 (a) Of the issue of March 10, 1920, past due interest coupons aggregating $6,870.00.

(b) Of the issue of July 15, 1920, past due interest coupons aggregating $60.00.

(c) Of the issue of November 24, 1920, past due interest coupons aggregating $2,340.00.

(d) Of the issue of May 10th, 1921, past due interest coupons aggregating $1,200.00.

(e) Of the issue of January 15th, 1922, past due interest coupons aggregating $5,430.00.

(f) Of the issue of June 1, 1922, past due interest coupons aggregating $7,200.00.

(g) Of the issue of December 1, 1922, past due interest coupons aggregating $2,910.00.

(h) Of the issue of April 20th, 1923, past due interest coupons aggregating $2,400.00.

(i) Of the issue of February 25, 1924, past due interest coupons aggregating $1,500.00.

(j) Of the issue of August 5th, 1924, past due interest coupons aggregating $30.00.

(k) Of the issue of December 20, 1924, past due interest coupons aggregating $23,220.00.

(l) Of the issue of May 10th, 1925, past due interest coupons aggregating $4,680.00.

(m) Of the issue of November 15th, 1928, past due interest coupons aggregating $4,647.50.

(n) Of the issue of February 15, 1921, past due interest coupons aggregating $25.00.

15 That is to say, plaintiffs hold the title to bonds of said issues as aforesaid in an amount aggregating $2,115,000.00, of which $14,000.00 is past due and unpaid, and title to interest coupons on said bonds in an amount aggregating $335,787.50, all of which are past due and unpaid, notwithstanding frequent demand has been made of the defendant City for the payment of said past due principal and bonds and all of said past due coupons.

That plaintiffs, or those whose title they have, acquired said bonds and interest coupons in due course and for value, prior to the maturities thereof.

That besides the aforesaid defaulted bonds and interest coupons owned by these plaintiffs, there are various and sundry other interest coupons on said bond issues, and some principal bonds, owned by sundry other persons than these plaintiffs which likewise are in default and unpaid, the amount of which these plaintiffs are unable to state.

Wherefore, plaintiffs pray that they have judgment against the defendant City for the amount of all past

due bonds and interest coupons held and owned by the plaintiffs as aforesaid, together with interest on such bonds, and interest coupons from the dates of their respective maturities as provided therein, and in all respects establishing the status of said bonds and bond issues and the validity of same as valid outstanding obligations against said City, and that plaintiffs be awarded such other relief, general or special, to which they may appear entitled, and they pray for costs of suit.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
Attorneys for Defendants.

Filed November 6th, 1931.

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16 (Title Omitted.)

Now comes the defendants and file this their answer to plaintiffs' first amended original petition filed in this cause, and say:

1st. The defendants except to plaintiffs' first amended original petition and say that the allegations therein made and contained do not show that this Court has jurisdiction of this cause, because it is not shown that plaintiffs are joint owners and holders of the bonds and coupons sued upon, nor that any one of them or either of them, is the owner and holder of a sufficient amount thereof to confer jurisdiction upon this Court.

2nd. Defendants except to said amended petition because it shows on its face that there is a misjoinder of causes of action, for this: It seeks legal relief in so

far as it seeks for judgment on the bonds and coupons sued upon, and seeks equitable relief in so far as it is sought to have the validity of the bonds and coupons established by a decree of this Court.

Further answering herein, defendants say:

1st. These defendants would further represent and show unto the Court that they have reason to believe, and do believe, that plaintiffs herein are not the true and unconditional owners and holders of the bonds sued on in this cause, in that the Liberty National Bank and Trust Company of New York, is
17 the owner and holder of bonds aggregating two hundred thousand dollars, in trust, to secure the payment of certain indebtedness owing by plaintiffs herein to the said Liberty National Bank and Trust Company, and the Liberty National Bank and ~~Trust~~ Company, by virtue of being the owner and holder of said bonds, is a necessary party to this suit, and should be made a party to this suit in order that all rights may be adjudicated and the rights of all parties to this suit fully protected.

2nd. This Court is without jurisdiction to hear and to determine the cause of action sued upon here, because plaintiffs are not the owners and holders of the bonds sued upon, or any of them. In this connection, defendants respectfully represent and show unto the Court that plaintiffs are not the owners of the bonds sued upon, or any of them; that they paid no valid consideration therefor, but that the bonds and coupons sued upon were delivered to, and are held by, the plaintiffs merely and solely for the purpose of collection, the plaintiffs having no beneficial interest therein whatever, and that the legal title and beneficial ownership is in others whose names are not disclosed and who are not parties plaintiff in this cause,

all of which will appear and be made manifest by the contract or agreement by and under which plaintiffs hold said bonds and coupons, a copy of which is hereto attached, marked Exhibit "A," made a part hereof, and reference thereunto made for the tenor, terms and effect thereof.

3rd. These defendants further state that they are informed and believe, and being so informed and so believing, allege the facts to be, that no one of the holders of bonds of interest coupons that are now due hold coupons or bonds in an amount sufficient to give this Court jurisdiction, or in the event that any one or more of the true owners and holders of said bonds and coupons that are now due, hold coupons or bonds in an amount sufficient to give this Court jurisdiction, then numerous owners and holders of bonds
18 do not have or hold an amount sufficient to give this Court jurisdiction of their claims. These defendants are not fully advised as to the names and residences of the holders and true owners of said bonds, or the amount of bonds and interest coupons held by any or all of them, but state that the plaintiffs have full information with reference to the names and places of residence of the true holders of said bonds and the amount of bonds and interest coupons now due, held by each of the true owners, and in order that all parties may be fully protected in these matters, and in order that this Court may fully determine whether or not it has jurisdiction, these defendants pray that plaintiffs be required to answer under oath the names and residences of the true holders and owners of said bonds, who have delivered said bonds to plaintiffs for collection, pursuant to the trust agreement as shown by copy attached hereto, and the amount of the bonds and coupons past due now held by each.

4th. Defendants deny all and singular the material allegations made and contained in said petition, and demand strict proof thereof.

5th. Further answering herein, defendants say that plaintiffs ought not to have and recover anything by their suit herein, in so far as they seek to recover judgment on bonds and coupons described in subdivision 1-s of Paragraph 3 of their said petition, because prior to the issuance of any of said bonds and coupons the defendant City of Cisco had exhausted its power to incur indebtedness, and that at the time of the issuance of the bonds and coupons herein referred to, the defendant city had outstanding and unpaid, bonds, warrants and evidence of indebtedness in excess of the amount on which a tax of $2.50 on one hundred dollars of the assessed valuation of
19 taxable property within the corporate limits, if levied and collected, would pay the interest and provide a sinking fund therefor as required by the Constitution and statutes of Texas; and the defendants are informed, have reason to believe, and do believe, and so charge the fact to be, that the plaintiffs are not the owners of any of the bonds and coupons in due course, and that they paid no valuable consideration for them, or any of them, all of which will appear and be made manifest by reference to Exhibit "A", hereto attached and made a part hereof, and that by reason of the premises, the bonds and coupons in this paragraph referred to are void in the hands of plaintiffs.

6th. Further answering herein defendants say that plaintiffs ought not to have and recover anything by reason of their suit herein because the City of Cisco did not legally issue said bonds but said bonds were issued by virtue of some kind or character of con-

spiracy, for needs that did not in fact exist, for purposes other than that specified in the bonds, and ordinances, and by virtue of a preconceived plan whereby said bonds were issued for purposes other than that provided for in the ordinances and resolutions, and the defendants herein verily believe; and so believing, allege the fact to be, that the City of Cisco did not receive value for said bonds as is contemplated by law and as is alleged by plaintiffs herein, and did not in fact receive anything of value for a large part of said bonds, and by virtue of the fact that the plaintiffs herein are not holders in due course for a valuable consideration, plaintiffs ought not to have and recover anything by reason of the facts plead by them, and which will be shown on the trial of this cause.

7th. It appearing from the allegations made in plaintiffs' petition that there are a large amount of bonds issued by the defendant city still outstanding, and which are not sued upon in this cause, and the owners and holders of which are not made parties, defendants pray that in the event judgment should be rendered herein in favor of the plaintiffs, on the bonds sued upon, that said judgment provide that all moneys and funds recovered by virtue of such judgment should be adjudged and decreed to be pro-rated among all the bondholders of the defendant city in the proportion that the bonds held by each of them bear to the moneys and funds collected.

BUTTS & WRIGHT,
Attorneys for Defendants.

Before me, the undersigned notary public, on this day personally appeared J. T. Berry, who being by me

first duly sworn, deposes and says on his oath that he is one of the defendants in the above numbered and entitled cause, that he has read the foregoing answer, and is familiar with the allegations of fact therein made, that the facts therein alleged as being true, are, within his knowledge, true, and he believes those facts alleged on information and belief to be true.

J. T. BERRY.

Subscribed and sworn to before me this 9th day of November, 1931.

F. D. WRIGHT,
Notary Public, Eastland County, Texas.

(Seal)

21 City of Cisco, Texas—Bonds.

Deposit Agreement.

Dated January 3, 1930.

Bondholders' Protective Committee: Charles P. Bullard, Chairman; John R. Brandon, Henry E. Poor, Robert D. White.

Counsel, Caldwell & Raymond, 115 Broadway, New York, N. Y.

Secretary, Horace H. Sears, 120 Broadway, New York, N. Y.

Depository: Liberty National Bank & Trust Company, 50 Broadway, New York, N. Y.

"An agreement, made and executed as of the third day of January, A. D. 1930, between John R. Brandon, Charges P. Bullard, Robert D. White and Henry E. Poor and such other persons, if any, as may hereafter be joined with them as members of the committee (hereinafter sometime called the "Committee"), parties of the first part, and such holders of bonds of the City of Cisco, Texas, and/or coupons for interest thereon, as may become parties to this agreement in the manner herein provided (herein sometimes called "Depositors"), parties of the second part,

"Whereas, said City of Cisco has failed to pay certain interest and principal payments due during the year 1929 on its bonds; and

"Whereas, it is desirable that the holders of the bonds, and coupons should unite and organize for the protection of their interests which can be accomplished most effectively and with the least expense by the appointment of said bondholders' committee with full power and authority in the premises; and

"Whereas, the Committee has consented to act for and on behalf of such holders of bonds and coupons as shall become parties hereto;

"Now, therefore, in consideration of the premises and of the advantages and benefits which
22 which may accrue to them, respectively, from union of interests and concert of action and for other good and valuable considerations, it is agreed between the parties hereto, each of the depositors agreeing for himself, and not for another, as follows:

"First: The Committee above named is hereby constituted and appointed a Bondholders' Committee to exercise the powers and perform the duties herein set forth, and incident thereto;

"Second: Liberty National Bank and Trust Company in New York City is hereby designated as depositary of the Committee under the terms of this agreement, with power to appoint with the approval of the Committee any incorporated Bank or Trust Company having its place of business anywhere in the United States outside of the City of New York as a sub-depositary, and said Liberty National Bank and Trust Company and any sub-depositaries so appointed by it are hereinafter referred to as "depositaries."

"Third: Holders of the following described bonds of the City of Cisco, Texas, to-wit:

"5% Water works bonds dated May 10, 1902, amount outstanding, per city's debt statement of September 10, 1926	$ 12,000.00
"5% Water works bonds dated November 8, 1907, amount outstanding, per city's debt statement of September 10, 1926	$ 9,000.00
"6% Water works bonds dated March 10, 1920, original amount	$500,000.00
"6% Paving bonds, Series 1, dated July 15, 1920, original amount	$100,000.00
"6% Water works extension funding bonds, Series 1, dated November 24, 1920, amount outstanding per city's debt statement of September 10, 1926	$300,000.
"5% Sanitarium and Park bonds, dated February 15, 1921, original amount	60,000.
"6% Water works extension funding bonds, Series 2, dated May 10, 1921, original amount	350,000.
"6% Water works bonds, Series 2, dated January 15, 1922, original amount	500,000.

"6% Water works funding bonds, Series 1922, dated December 1, 1922, original amount ..... 200,000.
"6% Funding bonds, Series 1 of 1923, dated April 20, 1923, original amount ..... 350,000.
"6% Water works funding bonds, Series 1923, dated August 20, 1923, original amount ..... 200,000.
"6% Funding Bonds, Series 1924, dated February 25, 1924, original amount.. 200,000.
"6% Funding bonds, Series 2 of 1924, dated August 5, 1924, original amount.... 200,000.
"6% Funding bonds, dated December 20, 1924, original amount .....$175,000.
"6% Funding bonds, Series 1925, dated May 10, 1925, amount outstanding per city's debt statement of September 10, 1926 ..... 334,000.
"6% Funding bonds, Series 2 of 1925, dated August 1, 1925, original amount 100,000.
"6% Funding bonds, Series 2 of 1925, dated August 1, 1925, original amount ..... 165,000.
"6% Funding bonds, Series 2, 1926, dated September 10, 1926, original amount. 200,000.
"5½% Funding Bonds, Series 2 of 1928, dated November 15, 1928, original amount ..... 226,000.

"With all unmatured interest coupons, and/or matured interest coupons from any of said bonds shall become parties to this agreement by depositing within such period as the Committee may from
24 time to time limit, under the terms of this agreement with one of the Depositaries provided for in the preceding article their bonds and/or coupons. In respect of registered bonds the depositors of such bonds shall deposit them with such in-

dorsements, transfers, assignments, proxies, powers of attorney or other instruments as may be required by the Committee or its depositary receiving such bond, in order to transfer or assign to the Committee the complete and absolute title to the bonds. The Committee may, in its discretion, accept deposits of other bonds and/or coupons of the City of Cisco, if there be such, as evidence of debt of said City other than bonds.

"The Committee may limit or extend the time under which deposits may be made under this agreement, and may impose penalties in respect to late deposits received, and either generally or in special instances, may, in its discretion, after the time limit has expired, accept deposits.

"Every person who shall deposit bonds and/or coupons as herein set forth shall be held to have assented to this agreement and shall be as fully bound by all of the provisions hereof as if he had subscribed and executed this agreement.

"Nothing herein shall be construed to give any rights of any kind to any bondholder of said city or to any person who shall not, as herein provided, become a party to this agreement within the time fixed by the Committee.

"Fourth: Bonds and coupons deposited hereunder shall be held and disposed of by the Committee and/or its depositaries subject to the sole order of the Committee.

"No depositary shall be liable for any act or omission or anything done, or permitted to be done by the depositary, at the request or direction of the Com-

mittee or the Chairman of the Committee, nor shall any depositary be liable for anything whatsoever except its own wilful misconduct.

"Fifth: Neither the Committee, as a Committee, nor any of its members, shall be personally or individually liable for the acts or omissions of any agent, attorney, or employe, nor shall the Committee nor any member of the Committee be liable for any act or omission of any other member, nor shall any member of the Committee be liable for anything but his own wilful misconduct.

"Sixth: Each depositor of bond and/or coupon shall receive under and subject to the terms and conditions of this agreement a certificate of deposit signed by the Depositary or agency receiving the same in such form as shall be prescribed by the Committee, and transferable only upon the books of the depositary issuing such certificate. The transferee of any such certificate of deposit duly indorsed by the depositor and properly witnessed shall, upon surrender of the same to the Depositary issuing such certificate, receive a new Certificate of deposit for the same amount of bonds and/or coupons in the name of such transferee or his nominee, who shall thereafter be deemed a depositor and shall thereafter be entitled to the same rights and privileges and subject in every way to this agreement as fully as the original depositor. The registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to, and neither the depositor nor the Committee, shall be affected by any notice to the contrary.

Neither the issue of any certificate of deposit nor the acceptance thereof by any transferee, shall con-

stitute any representation by the Depositary, or by the Committee, as to the title of the depositor to the bonds described in such certificate of deposit. The post office address of each depositor to be furnished by the depositor at the time of making a deposit to be registered in the books of the depositary, with which his bonds are deposited, and all notices or communications sent by the Committee, its secretary
26 or any depositary to the address of the depositor so registered, shall be sufficient and binding upon such depositor and holder of the certificate of deposit, irrespective of whether or not actual notice was received by him.

"No depositor shall have any right to withdraw any bonds or coupons from deposit hereunder, nor to take any separate action with respect to the deposited bonds or coupons. All deposited bonds and coupons shall remain in full force and effect for all purposes, and shall not be satisfied or discharged except if and as may be expressly declared or provided by the Committee.

"Seventh: Every depositor, for himself and not for any other, hereby sells, assigns, transfers and delivers to the Committee, its successors and assigns, each and every bond and coupon deposited hereunder by him, and also all his right, title, interest, property and claim at law, or in equity, by virtue of said bonds and coupons or any instrument securing the same, in and to the property and assets of the City, whether or not mortgaged to secure said bonds and coupons or not mortgaged to secure said bonds and coupons or otherwise, and any and all his claims against the City or any receiver or receivers, or under any receivership of the City, or any of its property, to the end that the Committee, as from time to time constituted, shall be

vested with full legal title to all the bonds and coupons deposited hereunder, and to each and every claim based thereon. Each depositor hereby covenants and agrees that he will at any time, on the request of the Committee, promptly execute and deliver any assignments, powers of attorney, or other instruments which the Committee may deem necessary or proper, effectually to vest full and complete ownership in the Committee of said deposited bonds and coupons as aforesaid.

27 "Eighth: The Committee may, as the owner and holder of the deposited bonds and coupons, demand, collect and receive all moneys due or payable thereon and may take or cause to be taken, or participate in or settle, compromise or discontinue any actions or proceedings for the collection of any of the bonds or coupons or the protection, enforcement or foreclosure of any legal or equitable lien securing or pertaining to same, including liens arising from the enforcement of taxes, levies, and assessments dedicated, levied or available for the service of the bonds, or for the appointment of a receiver of the City or for any purpose whatsoever. The Committee may give such directions, execute such papers, and do such acts, as the Committee may consider wise or proper in order to preserve or enforce the rights or to advance or serve the interest of the depositors.

"The Committee may from time to time, as it may deem wise, in any manner, purchase, acquire, contract in regard to, deal in, or sell or dispose of any property, real or personal, which may be or become affected by any such lien, foreclosures, or taxes, may make payments therefor or in regard thereto and in general carry out its powers under any of the provisions hereof. With regard to any properties or securities, acquired by it the Committee may exercise all rights of ownership, including voting rights and the rights to pledge.

"Ninth: To obtain funds to pay its expenses, to affect purchases or acquisitions as above stated or to discharge liens on property purchased or in which it has an interest, or to pay the obligations and expenses of the Committee, and as otherwise stated herein, or for any of the purposes of this agreement or in connection with any plan for readjustment, liquidation or settlement which the Committee may bring about or in which the Committee may participate, the Committee shall have power to borrow from time to time or at any time such moneys as the Committee
28 shall deem necessary or desirable, and upon such terms and conditions as it may fix, and to pledge all or any part of the bonds and coupons deposited hereunder as collateral security for the payment of any such loan or loans.

"Tenth: No Depositor shall under any circumstances be personally or individually liable in any way for the compensation of the Committee or its Counsel or its Depositaries or for the Committee's expense, or for any liability incurred by the Committee, or for anything done by the Committee whether the same be authorized by this agreement or not. The Committee shall have no power or authority to render any depositor individually or personally liable.

"Eleventh: The members of the Committee, the Committee's counsel, its agents and its depositaries, shall receive reasonable compensation for their services. The deposited bonds and coupons and all property purchased or acquired by or on behalf of the Committee as herein provided shall be charged with the payment of the compensation of the Committee, its counsel its agents and its depositaries, and all reasonable and proper expenses and expenditures of the Committee, its Counsel, its agents and its depositaries.

"Twelfth: In case any bonds, coupons or claims for interest shall be paid to it, the Committee may, in its discretion under such regulations as it may adopt from time to time, pay or cause to be paid to the holders of certificates of deposit issued hereunder the principal and/or interest thus received on account of the bonds and/or coupons represented by such certificates of deposit, respectively, but before making such payment, may deduct the share apportioned by the Committee to said bonds and/or coupons of the expenses and liabilities of the Committee, including all items of compensation provided for in the proceeding article, and in making such apportionment the Committee may take account of any extra or additional expenses, which in the opinion of the Com-
29 mittee is properly chargeable to any particular bonds and/or coupons, and such apportionment by the Committee shall be conclusive.

"Thirteenth: The Committee is authorized if and whenever it shall deem advisable, to prepare and adopt a plan or plans, for the refinancing, readjustment, liquidation or settlement of all or part of the bonds and/or other obligations of said City. The Committee may make a plan for the purchase or acquisition of any properties or securities of any kind, the purchase or acquisition of which, in the opinion of the Committee would aid in advancing the interest of the Depositors, or for the sale, exchange or disposition of any properties and assets acquired by the Committee or for sale, exchange or disposition in any way of the whole or any prorata part of the deposited bonds and coupons. The Committee may prepare a plan of its own and/or adopt, participate in, or co-operate in any plan or plans proposed or adopted by others. For the purposes of this agreement, any plan which the Committee shall either formulate, prepare, adopt, par-

ticipate or co-operate in, or approve, shall be deemed the plan of the Committee.

"The Committee may make any plan of any kind which it shall deem in the interest of the depositors.

"Any plan or agreement of refinancing and/or readjustment prepared or approved and adopted by the Committee as herein above provided, may, if the Committee deems it in the interest of depositing bondholders, in addition to making provisions for the bonds and coupons deposited with the Committee make provisions for any bonds and obligations, evidences of indebtedness or property of or claim against the City.

"The Committee shall deposit a copy of its plan with each of the Depositaries of the Committee.

"The Secretary of the Committee shall deposit in any post office or mail box, in the City of New York, a copy of such plan and agreement, in a postpaid wrapper, addressed to each of the holders of certificates of deposit at his post office address, as such address shall appear on the books of the Depositary of the Committee issuing such certificate of deposit, and in case such depositary or agency shall not have the address of such depositor, said plan shall be mailed to such Depositor in care of such depositary.

"Each holder of a certificate of deposit shall be held and be deemed to have assented and agreed to such plan, and such plan shall be binding and effective upon him and on all the bonds and coupons represented by the certificates of deposit held by him, unless he shall within thirty days after a copy of such plan shall have been deposited in a post office or mail box in the City of New York, notify the Secretary of the Committee, No. 120 Broadway, New York City, by registered mail, of his dissent therefrom, specifying

the number or numbers of the certificates of deposit held by him. Such notice of dissent must be mailed so as to reach such Secretary in New York City within such thirty days.

"Unless the holders of certificates of deposit representing two-thirds of the principal amount of the bonds deposited with all of the depositaries of the Committee shall within such thirty days assent to the Committee's plan or be deemed to assent to the same as herein provided, the plan shall at the expiration of said thirty days become operative, but if they do so assent, as above provided, the plan shall at the expiration of said thirty days become operative; but if the holders of certificates of deposit representing two-thirds of the principal amount of all the bonds deposited with the Depositary of the Committee shall, before the expiration of such thirty days, file with the Secretary of the Committee, file with the Secretary of the Committee their written assent to such plan, it
31 shall in such case immediately become operative.

"If such plan shall become operative and the Committee shall not abandon or recall such plan as hereinafter provided, the Committee shall return to each holder of a certificate of deposit dissenting within the thirty days as above provided, the bonds and coupons represented by his certificate of deposit, upon the surrender by him of his certificate of deposit properly indorsed, to the depositary of the Committee issuing such certificates, and upon the payment by him to such Depositary of any amount to be fixed by the Committee.

"The Committee may from time to time make such immaterial and unsubstantial modifications in any plan as it shall consider necessary, and the judgment of the Committee as to whether any change that it makes is immaterial and unsubstantial shall be final and conclusive.

"If the Committee shall make an amendment in or to a plan, which shall in its opinion materially affect the rights of the holders of certificates of deposit, a copy of such change or amendment shall be filed with depositary, and notice of the fact that a material amendment has been made in or to the plan, and the substance of such change and amendment shall be given in the same way and manner to each registered depositor as is above provided in case the Committee makes or adopts a plan, and for the same length of time, and any depositor who shall within thirty days after the mailing in the City of New York of such notice as above provided of such amendment notify the Secretary of the Committee in writing by registered mail addressed to the Secretary, that he does not accept the amendment, shall be deemed to have dissented from the entire plan as amended, unless the Committee abandon the amendment, but such notice must be mailed by such Depositor so that the same will reach the Secretary of the Committee in the City of New York within thirty days of the time the Secretary mailed the notice to such depositor; but in case a depositor fails to notify the Secretary within said thirty days as above provided, of his dissent, then he shall be deemed and held for all purposes to have assented to such plan as amended.

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"The Committee, at any time prior to carrying out any plan notwithstanding that it may have declared the same operative, may abandon and recall such plan, and in such case this agreement shall nevertheless continue in force as to the deposited bonds, as if no notice with respect to any plan and agreement had been given. The Committee after abandoning or recalling a plan or plans, may thereafter make a new plan or plans, and all of the provisions of this agreement hereinbefore or hereinafter set forth with refer-

ence to a plan shall apply to such new plan. If the Committee shall abandon and/or recall a plan the Secretary of the Committee shall mail to each depositor a notice thereof.

"The Committee may, for the purpose of ascertaining whether the holders of the Committee's certificates of deposit assent to or dissent from a plan, from time to time cause the books of the depositaries, for the transfer of certificates of deposit, to be closed during such period as the Committee may deem reasonable and necessary.

"Fourteenth: The Committee may from time to time increase the present Committee by electing an additional member or additional members, and the member or members so elected, together with those herein named or their successors, shall constitute the Committee under this agreement, with like force and effect as if they were specifically named. The Committee as at any time constituted, shall have all the powers, rights and interests of the Committee as originally formed. Any member of the Committee may resign, and the remaining members shall, in that case, and also in the case of the death of any member have power to fill the vacancy created by such resignation or death.

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"Any member may vote or act by proxy, who may, but need not be another member. The Committee may, except as herein specifically otherwise provided, act by a majority of its members either at a meeting or in writing without a meeting, but if any action is to be taken without a meeting each and every member or his proxy must receive full notice of such proposed action, so that he may have full opportunity to vote.

"Fifteenth: Each of the Depositaries shall be entitled to act in reliance on a certificate of the Secretary of the Committee as to the due adoption by it

of any resolution, or as to any action taken by the Committee, but in delivering any of the deposited bonds or coupons each Depositary shall require the order of the Chairman and Secretary of the Committee, certified by them to have been duly authorized by a majority of the Committee as at the time constituted, or if the Committee shall then have no Chairman, the order of the Secretary and two members so certified.

"Sixteenth: Any member of the Committee and any firm or corporation of which he may be a member or officer, and the Depositaries, and the bankers of the Committee or any of them, or their respective officers and agents, may be or become pecuniarily interested in any property or matters which are or may become subject to this agreement or to any plan and agreement of refinancing and/or readjustment which the Committee may approve or prepare and adopt as herein provided, and may contract with or deal with the Committee in the same manner as though such relationship, membership or interest did not exist, or be a member or manager of any committee or of any syndicate which may contract with the Committee or be formed in contemplation of, or in connection with any plan or agreement or refinancing and/or readjustment adopted under the authority of this agreement.

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"Seventeenth: The Committee is hereby authorized and empowered to construe this agreement and its construction of the same, made in good faith, shall be final, and conclusive and binding upon the depositors and holders of certificates of deposit. It may supply defects and omissions herein or make such modifications as in its judgment may be expedient or necessary to carry out the same properly and effectively, and its judgment as to such expediency or necessity shall

be final. The enumeration of special powers by any of the provisions of this agreement shall not be construed to limit any grant or general powers herein.

"Eighteenth: If for any reason the Committee shall consider it expedient at any time to terminate this agreement, it may do so by a vote of two-thirds of its members by giving like notice of its election so to do as hereinbefore provided in respect of the adoption of a plan. In the event of such termination of this agreement every depositor upon payment of such charge for the compensation of the Committee, its counsel, Depositaries and agents and their expenditures and expenses as the Committee may, in its sole and absolute discretion, determine, and upon reimbursement to the Committee of the share of such holder of all indebtedness, obligations and liabilities by the Committee incurred as fixed by the Committee shall, upon surrender of his certificate of deposit properly indorsed to the depositary which issued it, be entitled to the delivery of bonds and coupons to the amount represented by such certificate of deposit. In fixing and determining compensation, expenses and liabilities hereunder the Committee may take into account any extra or additional expense which in the opinion of the Committee is properly chargeable to any particular bonds and/or coupons and such appointment by the Committee shall be conclusive.

"The holder of a certificate of deposit upon the receipt by him of the securities, cash or property distributed by the Committee under any plan or otherwise (except a partial distribution of interest and/or principal which may be made notwithstanding anything herein contained) or by the surrender of his certificate of deposit will thereby release and discharge the Committee and the Depositaries from all liability

and accountability of every kind, character and description whatsoever.

"Nineteenth: An affidavit before a Notary Public by the Secretary of the Committee or any employe of the Secretary, of the mailing of any plant and/or any notices provided for or issued under this agreement shall be conclusive evidence of his acts and of the giving of said notices.

"Twentieth: This agreement shall not remain in force beyond the period of five years from the third day of January, 1930, unless extended by the committee with the consent of the holders of certificates of deposit representing a majority in amount of the deposited bonds and/or coupons.

"Twenty-first: This agreement may be executed in counterparts and all such counterparts shall be taken together as forming one agreement.

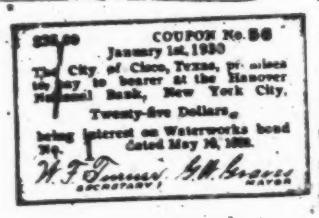
"In witness whereof, the members of the Committee have subscribed this agreement as of the day and year first above written and the parties of the second part have either subscribed this agreement or deposited their bonds and coupons and have accepted certificates of deposit therefor.

CHARLES P. BULLARD,
Chairman,
JOHN R. BRANDON,
HENRY E. POOR,
ROBERT D. WHITE,
Committee.

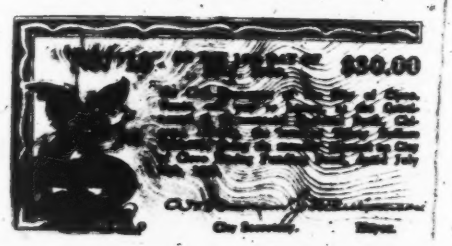
Filed November 10th, 1931.

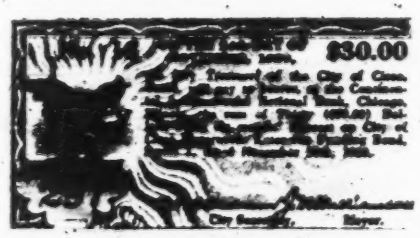
Upon motion of the attorneys for the plaintiff in the above entitled and numbered cause, it is ordered by the Court that photostatic copies of the bonds and coupons mentioned in the agreement of the attorneys for the plaintiffs and defendant, be attached as exhibits to the record in this case on appeal.

JAMES C. WILSON, Judge.

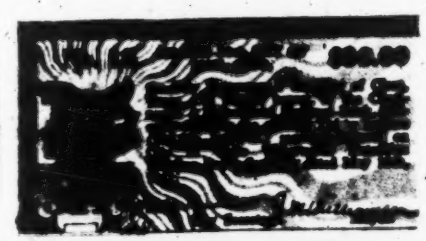

COUPON No. 86
January 1st, 1930
The City of Cisco, Texas, promises to pay to bearer at the Hanover National Bank, New York City,
Twenty-five Dollars,
being interest on Waterworks bond No. 1 dated May 10, 1902.
W. F. Turner, SECRETARY. G. W. Rogers, MAYOR

No bonds of this issue on deposit

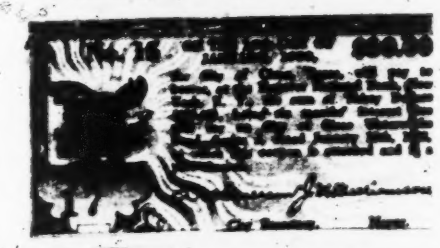




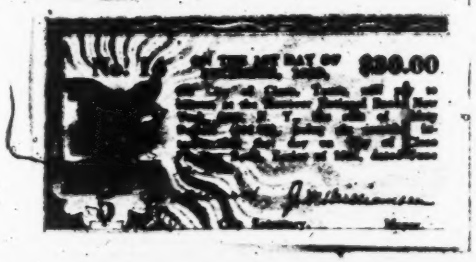
DATE OF ISSUE
May 10 1902
Nov 4 1907
March 10 1920
July 15 1920
Nov 24 1920.
Feb 15 1921



DATE OF ISSUE: May 10 1921



DATE OF ISSUE: January 15 1922



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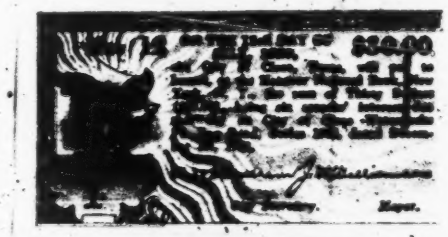

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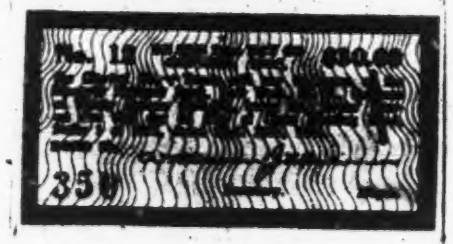

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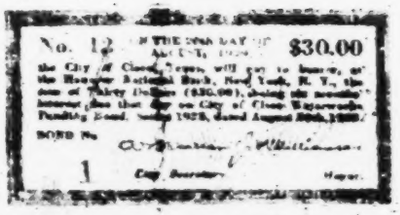
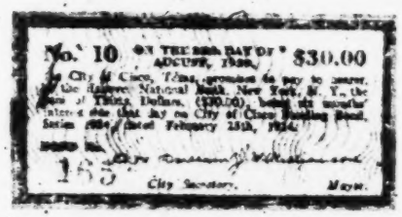
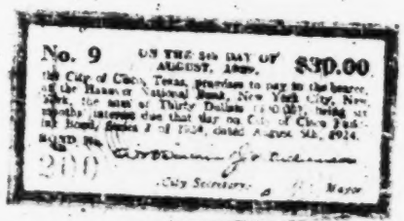
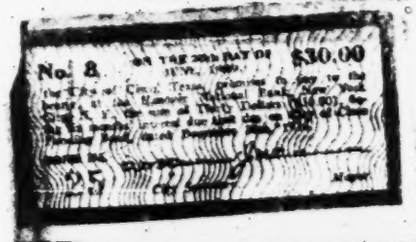
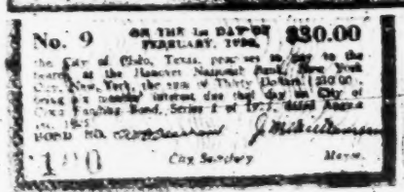

No. 12 $30.00
1


No. 10 ON THE 8th DAY OF AUGUST, 1924, $30.00
185


No. 9 ON THE 8th DAY OF AUGUST, 1924, $30.00
200


No. 8 ON THE 20th DAY OF $30.00
25

No. 8 ON THE TENTH DAY OF NOVEMBER, 1924 $30.00


No. 9 ON THE 1st DAY OF FEBRUARY, 1924, $30.00
180

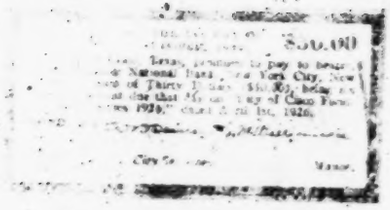
February 25, 1924.

August 5, 1924

December 20, 1924

May 10, 1925

August 1, 1925.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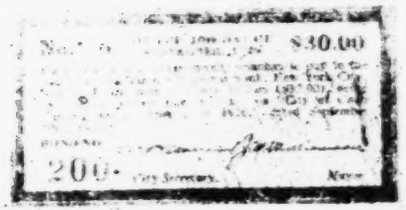
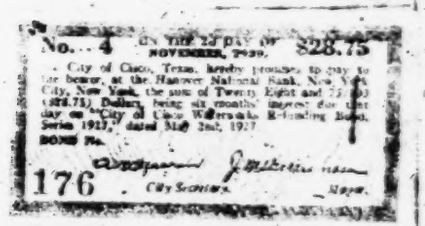
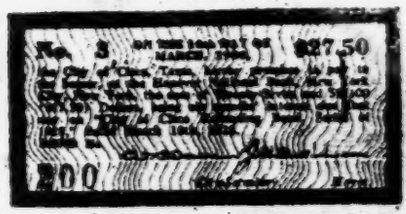

$30.00
200


No. 4 ON THE 28 DAY OF NOVEMBER, 1924, $28.75
176


No. 3 ON THE 20th DAY OF MARCH, 1926, $27.50
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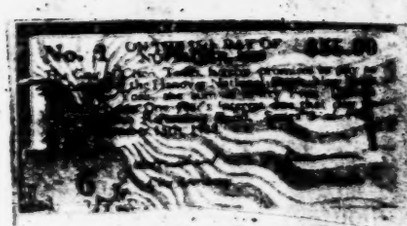
No. 2 ON THE 15th DAY OF $35.00

DATE OF ISSUE

April 1, 1926

May 2, 1927

March 10, 1926

November 15, 1926

UNITED STATES OF AMERICA

NUMBER

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond

AMOUNT
$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 20th day of December, 1945, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable December 20th, 1925, and semi-annually thereafter on the 20th day of June and the 20th day of December of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal and interest on this bond at maturity.

THIS BOND is one of a series of one hundred seventy-five (175) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Seventy-Five Thousand Dollars ($175,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is December 20th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED: C. R. Graham

City Secretary, City of Cisco, Texas.

REGISTERED: C. R. Graham

City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 93

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 2 OF 1926

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of September, 1956, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 10th day of March and the 10th day of September in each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, numbered consecutively from one (1) to two hundred (200), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Thousand Dollars ($200,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 4th day of September, A. D. 1926, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is September 10th, 1926.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby funded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitations.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

COUNTERSIGNED: _____ City Secretary, City of Cisco, Texas.

REGISTERED: _____ City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 94

STATE OF TEXAS COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 1926

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 1st day of April, 1948, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable April 1st, 1927, and semi-annually thereafter on the 1st day of October and the 1st day of April of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred sixty-five bonds, numbered consecutively from one (1) to one hundred sixty-five (165), inclusive, of like date and tenor, except as to maturity, aggregating One Hundred Sixty Five Thousand Dollars ($165,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is April 1st, 1926.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. M. Statham
City Secretary, City of Cisco, Texas.

REGISTERED: W. M. Statham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 56

STATE OF TEXAS COUNTY OF EASTLAND

City of Cisco Funding Bond

SERIES 2 OF 1925

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 1st day of August, 1957, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 1st day of February and the 1st day of August of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred bonds, numbered consecutively from one (1) to one hundred (100), inclusive, of like date and tenor, except as to maturity, aggregating One Hundred Thousand Dollars ($100,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is August 1st, 1925.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: C. W. Beacham
City Secretary, City of Cisco, Texas.

REGISTERED: C. W. Beacham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 200

STATE OF TEXAS COUNTY OF EASTLAND

AMOUNT $1000

City of Cisco Refunding Bond

SERIES 1928

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of March, 1958, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof, at the rate of five and one-half per centum (5½%) per annum, interest payable March 10th, 1929, and semi-annually thereafter on the 10th day of September and the 10th day of March of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal and interest on this bond at maturity.

THIS BOND is one of a series of three hundred twenty-five (325) bonds, numbered consecutively from one (1) to three hundred twenty-five (325), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Three Hundred Twenty-Five Thousand Dollars ($325,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 6th day of March, A.D. 1928, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is March 10th, 1928.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. M. Statham
City Secretary, City of Cisco, Texas.

REGISTERED: W. M. Statham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 157

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 1924

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 25th day of February, 1964, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable February 25th, 1925, and semi-annually thereafter on the 25th day of August and the 25th day of February of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand Dollars, ($200.000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is February 25th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED: W. D. Farnam
City Secretary, City of Cisco, Texas.

REGISTERED: W. D. Farnam
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

200

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 2 of 1924

$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer on the 5th day of February, 1964, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable August 5th, 1925, and semi-annually thereafter on the 5th day of February and the 5th day of August of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand Dollars ($200,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinances above mentioned, is August 5th, 1924.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

UNITED STATES OF AMERICA

NUMBER 173

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond
Series 1, of 1923

AMOUNT $1000

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 20TH DAY OF APRIL, 1954, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum; interest payable April 20th, 1924, and semi-annually thereafter on the 20th day of October and the 20th day of April of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred fifty (350) bonds, of like date and tenor, except as to maturity, aggregating Three Hundred Fifty Thousand Dollars ($350,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is APRIL 20TH, 1923.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the said indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Commissioner.

City Secretary, City of Cisco, Texas

Mayor, City of Cisco, Texas

Commissioner.

UNITED STATES OF AMERICA

NUMBER 41

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Funding Bond Series 1923

AMOUNT $1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 20th day of February, 1948, at the Hanover National Bank, New York, N. Y., the sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annualy on the 20th day of February and the 20th day of August of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of, and interest on this bond at maturity.

THIS BOND is one of a series of two hundred (200) bonds, of like date and tenor, except as to maturity, aggregating Two Hundred Thousand ($200,000.00) Dollars, issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is August 20th, 1923.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Jo M Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED: W R Beatham
City Secretary, City of Cisco, Texas.

REGISTERED: W R Beatham
City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

NUMBER 110

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Refunding Bond, Series 1927

$1000

THE CITY OF CISCO, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 2nd day of May, 1955, at the Hanover National Bank, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of five and three-quarters per centum (5¾%) per annum, interest payable May 2nd, 1928, and semi-annually thereafter on the 2nd day of November and the 2nd day of May of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred twenty five (225) bonds, numbered consecutively from one (1) to two hundred twenty five (225), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Twenty Five Thousand ($225,000.00) Dollars, issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 2nd day of May, A.D. 1927, and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is May 2nd, 1927.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson

NUMBER 6

DENOMINATION $1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco
Refunding Bond
Series 2 of 1928

THE CITY OF CISCO, a municipal corporation duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 15th day of November, 1944, at the HANOVER NATIONAL BANK, New York City, New York, the principal sum of

ONE THOUSAND DOLLARS

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of five and one half per centum (5½%) per annum, interest payable November 15th, 1929, and semi-annually thereafter on the 15th day of May and the 15th day of November of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of two hundred twenty six bonds, numbered consecutively from one (1) to two hundred twenty six (226), inclusive, of like date, tenor and effect, except as to number and maturity, aggregating the sum of Two Hundred Twenty Six Thousand Dollars ($226,000.00), issued by the City of Cisco, Texas, and exchanged for a like amount of legal, valid and binding outstanding indebtedness of said City, under and by virtue of the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is November, 15th, 1928.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the series of which it is a part, and of the warrants hereby refunded, have been properly done and performed and have happened, in regular and due time, form and manner as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED:

C. W. Statham
City Secretary, City of Cisco, Texas.

REGISTERED:

C. W. Statham
City Treasurer, City of Cisco, Texas.

Number 8

Amount $1,000.00

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO PAVING FUNDING BOND

SERIES 1

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 15th day of July, 1930, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon, from date hereof, at the rate of six per centum (6%) per annum, interest payable semi-annually January 15th and July 15th of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City are hereby irrevocably pledged for the prompt payment of the principal and interest of this bond at maturity.

THIS BOND is one of a series of one hundred (100) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Thousand ($100,000.00) Dollars, issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, dated November 20th, 1919, issued for the purpose of constructing street improvements in said City, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance legally passed by the Board of Commissioners of said City, at a regular meeting of said Board on July 12, 1930, which ordinance is of record in Book 2, at page 12, et seq., of the Minutes of said City Commission.

THE DATE of this bond, pursuant to the ordinance above mentioned, is July 15th, 1930.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done, happened and performed in regular and due time, form and manner, as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and that the said Commission of said City, exercising said bond, powers under any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco, by its Board of Commissioners, has caused this bond to be signed by its Mayor, countersigned by the City Secretary, registered by the City Treasurer, and the corporate seal of said City to be impressed hereon, and the same to be dated as of the date last above written.

J. Williamson
Mayor, City of Cisco, Texas.

COUNTERSIGNED:

C. W. Brashear
City Secretary, City of Cisco, Texas.

REGISTERED:

C. W. Brashear
City Treasurer, City of Cisco, Texas.

Number

Amount
$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Funding

6

$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Funding Bond Series of 1922

THE CITY OF CISCO, a Municipal Corporation duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 1st day of June, 1944, at the Hanover National Bank, New York City, New York, the sum of

One Thousand Dollars

($1,000.00), in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable June 1st, 1923, and semi-annually thereafter on the 1st day of June and the 1st day of December of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of one hundred (100) bonds, of like date and tenor, except as to maturity, aggregating One Hundred Thousand Dollars ($100,000.00), issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, issued for the purpose of the construction of street paving and improvements in and for said City, for which said City received full value and consideration; under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City on the 8th day of May, 1922, and of record in Book 1, page 158 et seq., of the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is June 1st, 1922.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date first above written.

Mayor, City of Cisco, Texas.

COUNTERSIGNED:

City Secretary, City of Cisco, Texas.

REGISTERED:

City Treasurer, City of Cisco, Texas.

Number
94

Amount
$1000

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Bond
Series 2

THE CITY OF CISCO, in the County of Eastland and State of Texas, for value received, hereby promises to pay to bearer on the 15th day of January, 1950, at the Hanover National Bank, New York, N. Y., the principal sum of

One Thousand Dollars

($1,000.00), [illegible] of the United States of America, with interest thereon from date hereof at the rate of [illegible] per annum, payable January 15th, 1932, and semi-annually thereafter on the 15th day of July, and the 15th day of January of each year upon presentation and surrender of proper coupons [illegible] hereof as they severally mature, and [illegible] to pay at maturity said principal sum, together with interest thereon, optional by progress herein specified, at the bank above named.

[illegible] of a series of [illegible] bonds, numbered consecutively from one (1) to [illegible] inclusive, and dated January 15th, 1932, each in the denomination of One Thousand Dollars ($1,000.00) each, aggregating the [illegible] Dollars ($[illegible]), issued for the purpose of the acquisition of [illegible] for the City of Cisco, under and by virtue of the [illegible] of the City of Cisco, Texas, and in pursuance [illegible] passed on the 25th day of January, 1932, and [illegible] and the Constitution.

[illegible] with the ordinance above mentioned, to January 15th, 1952.

[illegible] that the interest of this bond, and the series of which [illegible] and the prompt collection of annual property taxegiving owner of the [illegible] sufficient, within said City on the 6th day of [illegible] annually preceding to and to the maturities of this [illegible] appointed to collect and then these, form and manner, [illegible] for the levy and collection of taxes has been made [illegible] and to the [illegible] payment of the bond, and the series of which it is [illegible] and that the total indebtedness [illegible] created on the said 15th January does; and that [illegible] bond and the series of which it is a part, does not exceed any [illegible] limitation, [illegible].

IN TESTIMONY WHEREOF, the City of Cisco has caused the corporate seal of said City to be hereto affixed, and this [illegible] to be signed by the Mayor, countersigned by the City Secretary, and registered by the City Treasurer, on the [illegible] day of January, 1932.

[illegible]
Mayor, City of Cisco, Texas.

COUNTERSIGNED: [illegible]
City Secretary, City of Cisco, Texas.

REGISTERED: [illegible]
City Treasurer, City of Cisco, Texas.

No 233

$ 1000

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO

FUNDING BOND

SERIES 1925

The City of Cisco, a municipal corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to the bearer hereof on the 10th day of May, 1958, at the Hanover National Bank, New York City, New York, the sum of

ONE THOUSAND DOLLARS

in lawful money of the United States of America, with interest thereon from date hereof at the rate of Six per centum (6%) per annum, interest payable semi-annually on the 10th day of November and the 10th day of May of each year; principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred thirty-four bonds of like date and tenor, except as to maturity, aggregating Three Hundred Thirty-Four Thousand Dollars ($334,000.00) issued for the purpose of funding a like amount of the outstanding indebtedness of the City of Cisco, for which said City received full value and consideration, under and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco, and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, in conformity with the ordinance above mentioned, is May 10th, 1925.

AND IT IS HEREBY CERTIFIED AND RECITED that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond have been properly done and performed and have happened, in regular and due time, form and manner, as required by law; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF the City of Cisco, Texas, has caused the seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

Countersigned:

City Secretary, City of Cisco, Texas.

Registered:

City Treasurer, City of Cisco, Texas.

UNITED STATES OF AMERICA

Number
73

Amount
$1,000.00

STATE OF TEXAS
COUNTY OF EASTLAND

City of Cisco Waterworks Extension Funding Bond, Series 1

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received, is indebted to and hereby promises to pay to bearer on the 24th day of November, 1952, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon from date hereof, at the rate of six per centum (6%) per annum, interest payable semi-annually on the 24th day of May and the 24th day of November of each year, principal and interest payable at the [illegible]; and the full faith and credit of the City of Cisco, and all of the [illegible] pledged for the prompt payment of the principal of and interest on this bond.

THIS BOND is one of a series of [illegible] maturity, aggregating Three Hundred Thousand [illegible] a like amount of the outstanding [illegible] tion of waterworks extensions to and for [illegible] tion; under and by virtue of the Constitution [illegible] the City of Cisco, and pursuant to an [illegible] City and of record in the minutes of said [illegible]

THE DATE of this bond, to conformity [illegible]

AND IT IS HEREBY CERTIFIED AND RECITED that [illegible] the Constitution and laws of the State of [illegible] sufficient to pay the interest on said bonds as the same shall [illegible] at maturity; that all acts, conditions and things required to be [illegible] this bond, have been properly done, happened and performed in due time, form and manner as required by the Constitution and laws of the State of Texas and the ordinances of the City of Cisco; and that the issuance of this bond does not violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused this bond to be signed by the [illegible] City Treasurer, as of the date last above written.

Mayor, City of Cisco

COUNTERSIGNED:

City Secretary, City of Cisco

REGISTERED:

City Treasurer, City of Cisco

Number 236

Amount $1,000.00

UNITED STATES OF AMERICA

STATE OF TEXAS

COUNTY OF EASTLAND

City of Cisco Waterworks Extension Funding Bond, Series 2

THE CITY OF CISCO, a Municipal Corporation, duly incorporated under the laws of the State of Texas, for value received is indebted to and hereby promises to pay to bearer on the 10th day of May, 1956, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

ONE THOUSAND DOLLARS

($1,000.00) in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per centum (6%) per annum, interest payable semi-annually on the 10th day of May and the 10th day of November of each year, principal and interest payable at the bank above named; and the full faith and credit of the City of Cisco, and all of the resources of said City, are hereby irrevocably pledged for the prompt payment of the principal of and interest on this bond at maturity.

THIS BOND is one of a series of three hundred thirty (330) bonds, of like date and tenor, except as to maturity, aggregating Three Hundred Thirty Thousand Dollars ($330,000.00), issued for the purpose of funding a like amount of the outstanding warrant indebtedness of the City of Cisco, issued for the purpose of the construction of waterworks extension and improvements for which said City received full value and consideration therefor and by virtue of the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco and pursuant to an ordinance duly and legally adopted by the City Commission of said City and of record in the Minutes of said City Commission.

THE DATE of this bond, conformably with the ordinance above mentioned, is May 10th, 1921.

AND IT IS HEREBY EXPRESSED, that the City Commission has made provision that provision has been made, as required by the Constitution and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due and to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the City Charter of the City of Cisco; and that the total indebtedness of said City, including this bond, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Cisco has caused the seal of said City to be hereto affixed and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

J. M. Williamson
Mayor, City of Cisco, Texas.

REGISTERED:

E. W. Dickson
City Treasurer, City of Cisco, Texas.

COUNTERSIGNED:

[illegible]
City Secretary, City of Cisco, Texas.

$1,000.00
UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

STATE OF TEXAS
COUNTY OF EASTLAND

CITY OF CISCO

Waterworks Bond

THE CITY OF CISCO, in the County of Eastland and State of Texas, for value received, hereby promises to pay to bearer on the 10th day of March, 1939, at the Continental & Commercial National Bank, Chicago, Illinois, the sum of

One Thousand Dollars

in lawful money of the United States of America, with interest thereon from date hereof at the rate of six per cent. (6%) per annum. Interest payable March 10th, 1931, and thereafter on the 10th day of September and the 10th day of March of each year upon presentation and surrender of proper coupon; and the Treasurer of said City is hereby authorized, ordered and directed to pay to bearer said principal sum, together with interest thereon, evidenced by coupons hereto annexed, at the bank above named.

This Bond is one of a series of five hundred (500) bonds, numbered consecutively from one (1) to five hundred (500) inclusive, in the denomination of One Thousand Dollars ($1,000.00) each, aggregating the sum of Five Hundred Thousand Dollars ($500,000.00), issued for the purpose of the construction of the improvements and extensions to the waterworks system of said City, under and by virtue of the Constitution and Laws of the State of Texas and the City Charter of the City of Cisco, Texas, and in pursuance of an ordinance passed by the City Commission of the City of Cisco on the 10th day of March, 1930, and recorded in Book 2, at page 20, et seq. of the Minutes of said City Commission, as amended by an ordinance passed by said City Commission on the 28th day of April, 1930, and recorded in Book 2, at page 29, et seq. of the Minutes of said City Commission.

The Date of this bond, in conformity with the ordinance above mentioned, is March 10th, 1930.

And It Is Hereby Certified and Recited that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done, have happened and been performed in regular and due form as required by law, and that the total indebtedness of said City, including this bond, does not exceed the constitutional or statutory limitation.

IN TESTIMONY WHEREOF, the City of Cisco has caused the corporate seal of said City to be hereto affixed, and this bond to be signed by the Mayor, countersigned by the City Secretary and registered by the City Treasurer, as of the date last above written.

Mayor, City of Cisco, Texas.

Countersigned:

City Secretary, City of Cisco, Texas.

Registered:

United States OF AMERICA

No. 1

The State of Texas

$1,000.00

CITY OF CISCO

COUNTY OF EASTLAND.

WATERWORKS BOND.

The City of Cisco, in the County of Eastland, a municipal corporation duly incorporated under the laws of the State of Texas, for value received, hereby promises to pay to the bearer forty years from the date hereof, at the Hanover National Bank in New York, State of New York, the sum of ONE THOUSAND ($1,000.00) DOLLARS, in lawful money of the United States of America, together with interest thereon from date hereof at the rate of five per cent per annum interest payable semi-annually on the first day of January and the first day of July respectively, of each year upon presentation and surrender of the [illegible] at the Hanover National Bank, New York, State of New York.

The City of [illegible] hereby [illegible] that [illegible] and [illegible] [illegible] [illegible]

60 (Title Omitted.)

To the Honorable James C. Wilson Judge of said Court:

Now comes Reserve Loan Life Insurance Company, a life insurance corporation, incorporated and existing under and by virtue of the laws of the State of Indiana, and having its office and principal place of business in the City of Indianapolis, Indiana, and with leave of the Court first had and obtained, files this, its Plea of Intervention in the above numbered and entitled cause, and for cause of action against Defendant. City of Cisco, alleges the following:

I.

This Intervener is a resident and citizen of the State of Indiana. The defendant, City of Cisco, is and at all times heretofore has been a municipal corporation organized and existing under the general laws of the State of Texas, and since July 28th, 1919, has been incorporated and acting under a special charter as provided by the laws of the State of Texas. The defendants are residents and citizens of the County of Eastland, State of Texas, which is within the Abilene District of the District Court of the United States for the Northern District of Texas.

II.

This is a suit between citizens of different states, it being a suit between a resident of the City of Indianapolis, State of Indiana, as plaintiff intervener, against the City of Cisco, Texas, J. T. Berry, of Cisco,
61 Texas, being its Mayor, which is a citizen of the State of Texas and has its place of residence in the Abilene Division of the District Court of the United States for the Northern District

of Texas, and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand ($3,000.00) Dollars.

III.

On September 10th, 1926, the defendant City of Cisco, did issue and execute its bonds denominated the City of Cisco Waterworks Funding Bonds, Series No. 2 of 1926", in the aggregate sum of $200,000.00, said bonds being numbered consecutively from One (1) to Two Hundred (200), inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10th, and September 10th in each year, principal payable serially on September 10th from 1947 to 1966, inclusive.

IV.

At the time of the issuance of said bonds, coupons were executed and issued and attached to said bonds by said City, to evidence and represent the interest payment on said respective bonds as therein provided. Each and all of said principal bonds and each and all of said interest coupons were in form and in fact negotiable instruments, due and payable to bearer. That each and all of said principal bonds and each and all of said interest coupons were duly executed by the Mayor, City Secretary and Treasurer of said City, who were duly authorized under the laws and constitution of the State of Texas and by terms of the City Charter of said City, so to execute the same. That prior to the sale of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, whose certificate ap-

62 proving same was duly issued at the time of the authorization, and prior to the issuance or sale of said bonds and interest coupons thereon, the City Commission of said City, as authorized and required by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said City, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as the same should mature.

That upon the issuance of said bonds and interest coupons, after the registration and approval thereon as aforesaid, and prior to the respective maturities thereof, and also prior to the maturities of any of the interest coupons hereinafter described as being past due, all of said bonds with the interest coupons attached thereto, were sold by the said City for a consideration, in each instance such as was required by law, and the consideration, in cash, was duly received therefor by said City and the proper officials thereof; and thereafter the said bonds and the unpaid coupons thereon, in due course, before maturity, for a valuable consideration were purchased by and became the property of this intervener, and intervener is now the holder of same.

V.

Said bonds and interest coupons owned by this Intervener, and being a part of said Waterworks Funding Bonds, Series No. 2, dated September 10th, 1926, as above alleged, are as follows:

Number.	Maturity Date.	Amount.
1 to 10	September 10, 1947	$10,000.00
11 to 20	September 10, 1948	10,000.00

21 to 30	September 10, 1949	10,000.00
41 to 50	September 10, 1951	10,000.00
51 to 60	September 10, 1952	10,000.00

Said bonds aggregating $50,000.00 are not due as appears from the above description thereof, but the interest coupons thereon are due and unpaid as follows:

Interest coupons due September 10, 1929, March 10, 1930, September 10, 1930, March 10th, 1931, and September 10th, 1931 are now at this time past due and unpaid, and although and notwithstanding this Intervener has repeatedly made demand of the Defendant City and its officers to pay the same, they have declined and refused to pay them or any part thereof, and there is now due and owing this intervener on said past due interest coupons, the sum of $7,500.00, being $1,500.00 due September 10th, 1929, $1,500.00 due March 10th, 1930, $1500.00 due September 10th, 1930, $1,500.00 due March 10th, 1931 and $1,500.00 due September 10th, 1931.

Premises considered Intervener prays that they have judgment against the defendant city for the amount of all past due interest coupons held and owned by this intervener, as above alleged, and that they have judgment establishing the status of said bonds and declaring them valid as outstanding obligations against said City of Cisco. Intervener prays for costs of suit, and for such other and further relief, general and special, to which in the premises it may be entitled.

McBRIDE, O'DONNELL &
HAMILTON,
By L. C. McBRIDE.
FRANK G. WEST,
Attorneys for Intervener, Reserve Loan Life Insurance Company.

Filed October 14th, 1931.

64 (Title Omitted.)

To the Honorable James C. Wilson, Judge of said Court:

Now comes the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association formed and existing as an entity under the laws of the State of Ohio, with its office and principal place of business in Cleveland, Ohio, with D. B. Robertson as its President, and Albert Phillips its General Secretary and Treasurer, and with leave of the Court first had and obtained files this its plea of intervention in the above numbered and entitled cause, and for cause of action against the defendant, City of Cisco, Texas, and J. T. Berry being its Mayor, alleges the following:

1.

Intervener and its officers are residents and citizens of the State of Ohio. The defendant, City of Cisco, Texas, is and at all times heretofore has been a municipal corporation organized and existing under the general laws of the State of Texas, and since July 28th, 1919, has been incorporated and acting under a special charter as provided by the laws of the State of Texas. The defendants are resident citizens of the County of Eastland, State of Texas, which is within the Abilene Division of the District Court of the United States for the Northern District of Texas.

2.

This is a suit between citizens of different states, it being a suit between a resident and citizen of the State of Ohio, as plaintiff intervener, against the City of Cisco, Texas, and the matter in controversy
65 herein, exclusive of interest and costs, exceeds the sum of $3,000.00, and further pleading the intervener says:

3.

That on the various and sundry dates as follows, the defendant City of Cisco did execute and issue its various and sundry bonds as follows, to-wit:

(a) On, to-wit, March 10, 1920, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds," bearing date March 10th, 1920, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at 6% per annum, payable March 10th, 1921, and thereafter semi-annually on September 10th and March 10th in each year, principal payable serially on March 10th from 1923 to 1960, inclusive.

(b) On, to-wit, July 15th, 1920, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Paving Fund Bonds, Series 1," bearing date July 15th, 1930, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th in each year, principal payable serially on July 15th from 1930 to 1949, inclusive.

(c) On, to-wit, November 24th, 1920, its bonds in the aggregate sum of $300,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds, Series 1," bearing date November 24th, 1920, numbered consecutively from 1 to 300 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 24th in each year, principal payable serially on November 24th, from 1950 to 1960, inclusive.

(d) On, to-wit, May 10th, 1921, its bonds in the aggregate sum of $350,000.00, denominated "City of Cisco Waterworks Extension Funding Bonds," bear-

ing date May 10th, 1921, numbered consecutively from 1 to 350 inclusive, in denomination of $1,-
66 000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10th in each year, the principal of said bonds payable serially on May 10th from 1941 to 1961, inclusive.

(e) On, to-wit, January 15th, 1922, its bonds in the aggregate sum of $500,000.00, denominated "City of Cisco Waterworks Bonds, Series 2," bearing date January 15th, 1922, numbered consecutively from 1 to 500, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th in each year, principal payable serially on January 15th from 1933 to 1960, inclusive.

(f) On, to-wit, June 1st, 1922, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series of 1922," bearing date June 1st, 1922, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 1st, in each year, principal payable serially on June 1st from 1943 to 1962, inclusive.

(g) On, to-wit, December 1st, 1922, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1922," bearing date December 1st, 1922, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable January and July 15th, in each year, principal payable serially on January 15th from 1943 to 1962, inclusive.

(h) On, to-wit, April 20th, 1923, its bonds in the aggregate sum of $350,000.00, denominated "City of

Cisco Funding Bonds, Series 1 of 1923," bearing date April 20th, 1923, numbered consecutively from 1 to 350, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 20th in each year, principal payable serially on April 20th from 1943 to 1962, inclusive.

67 (i) On, to-wit, August 20th, 1923, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Waterworks Funding Bonds, Series 1923," bearing date August 20th, 1923, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 20th day of February and August in each year, principal payable serially on February 20th from 1944 to 1963, inclusive.

(j) On, to-wit, February 25th, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 1924," bearing date February 25th, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable 25th day of February and August in each year, principal payable serially on February 25th from 1949 to 1964, inclusive.

(k) On, to-wit, August 5th, 1924, its bonds in the aggregate sum of $200,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1924," bearing date August 5th, 1924, numbered consecutively from 1 to 200 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 5th in each year, principal payable serially on February 5th from 1945 to 1964, inclusive.

(l) On, to-wit, December 20th, 1924, its bonds in the aggregate sum of $175,000.00, denominated "City

of Cisco Funding Bonds," bearing date December 20th, 1924, numbered consecutively from 1 to 175, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable June and December 20th, in each year, principal payable serially on December 20th from 1945 to 1964, inclusive.

(m) On, to-wit, May 10th, 1925, its bonds in the aggregate sum of $334,000.00, denominated "City of Cisco Funding Bonds, Series 1925," bearing date May 10th, 1925, numbered consecutively from 1 to 334, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable May and November 10th in each year, principal payable
68 serially on May 10th from 1931 to 1965, inclusive.

(n) On, to-wit, August 1st, 1925, its bonds in the aggregate sum of $100,000.00, denominated "City of Cisco Funding Bonds, Series 2 of 1925," bearing date August 1st, 1925, numbered consecutively from 1 to 100 inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable February and August 1st in each year, principal payable serially on August 1st from 1946 to 1965, inclusive.

(o) On, to-wit, April 1st, 1926, its bonds in the aggregate sum of $165,000.00, denominated "City of Cisco Funding Bonds, Series 1926," bearing date April 1st, 1926, numbered consecutively from 1 to 165, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable April and October 1st in each year, principal payable serially on April 1st from 1937 to 1956, inclusive.

(p) On, to-wit, September 10th, 1926, its bonds in the aggregate sum of $200,00.00, denominated "City of Cisco Funding Bonds, Series 2 of 1926," bearing date

September 10th, 1926, numbered consecutively from 1 to 200, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 6% per annum, payable March 10th and September 10th in each year, principal payable serially on September 10th from 1947 to 1966, inclusive.

(q) On, to-wit, May 2nd, 1927, its bonds in the the aggregate sum of $200,000.00, denominted "City of Cisco Waterworks Refunding Bonds, Series 1927," bearing date May 2nd, 1927, numbered consecutively from 1 to 225, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5¾% per annum, payable May and November 2nd in each year, principal payable serially on May 2nd from 1943 to 1967, inclusive.

(r) On, to-wit, March 10th, 1928, its bonds in the aggregate sum of $325,000.00, denominated "City of Cisco Refunding Bonds, Series of 1928," bearing date March 10th, 1928, numbered consecutively from 1 to 325 inclusive, in denomination of $1,000.00 each, bearing interest at 5½% per annum, payable
69 March and September 10th in each year, principal payable serially on March 10th from 1939 to 1968, inclusive.

(s) On, to-wit, November 15th, 1928, its bonds in the aggregate sum of $226,000.00, denominated "City of Cisco Refunding Bonds, Series 2 of 1928," bearing date November 15th, 1928, numbered consecutively from 1 to 226, inclusive, in denomination of $1,000.00 each, bearing interest at the rate of 5½% per annum, payable May and November 15th in each year, principal payable serially on November 15th from 1944 to 1968, inclusive.

(t) On, to-wit, February 15th, 1921, its bonds aggregating $60,000.00, denominated "City of Cisco Sanitarium and Park Bonds," bearing date February 15th, 1921, bearing interest at the rate of 5% per annum, payable February and August 15th, in each year, in denomination of $1,000.00 each, and being numbered consecutively from 1 to 60, inclusive.

(u) On, to-wit, May 10th, 1902, its bonds denominated "City of Cisco Waterworks Bonds," bearing date May 10th, 1902, in denomination of $1,000.00 each, and bearing interest at the rate of 5% per annum.

4.

That at the time of the execution and issuance of the various and sudry bonds aforesaid, coupons were executed and issued by said City to evidence and represent the interest payments on said respective bonds as therein provided. That each and every of said principal bonds, and each and every of said interest coupons, were in form and in fact negotiable instruments, due and payable to bearer. That each and every of said principal bonds, and each and every of said interest coupons, were duly executed by the Mayor, City Secretary and Treasurer of said City, being thereunto duly authorized in law, by the Constitution of the State of Texas, and by the terms of the Charter of said City. That prior to the
70 sale by said City of any of said principal bonds or interest coupons thereon, same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas and his certificate issued to that effect. That at the time of the authorization, and prior to the issuance or sale of said bonds or interest coupons thereon, the City Commission of said City, as authorized and required

by law and the Constitution of the State of Texas, did levy a continuing, direct, annual ad valorem tax on all taxable property in said City, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds, as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective maturities thereof, all of said bonds, with the interest coupons thereto, were sold by said City for a consideration in each instance such as was required by law, and the consideration, in cash, duly received therefor by said City and the proper officials thereof.

Intervener is the owner of, and holds the title to various and sundry of said bonds and interest coupons thereon, including the following:

(a) Of the issue of March 10th, 1920, fifty bonds aggregating $50,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: March 10th, 1930, $3,000.00, and March 10th, 1931, $3,000.00, making an aggregate of past due and delinquent interest by reason of the nonpayment of interest coupons at dates of the maturity thereof of the sum of $6,000.00.

71 (b) Of the issue of March 10th, 1928, forty-seven bonds aggregating $47,000.00, drawing interest at the rate of 5½% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: March 10th, 1930, $2,585.00, and March 10th, 1931, $2,585.00, making an aggregate of past due and delinquent interest by reason of the nonpayment of interest coupons at dates of the maturity thereof of the sum of $5,170.00.

(c) Of the issue of September 10th, 1926, eighteen bonds aggregating $18,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured, but interest coupons thereon having matured as follows: September 10th, 1929, $540.00; March 10th, 1930, $540.00; September 10th, 1930, $540.00; March 10th, 1931, $540.00; and September 10th, 1931, $540.00; making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity thereof of the sum of $2,700.00.

(d) Of the issue of September 10th, 1926, five bonds aggregating $5,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured, but interest coupons thereon having matured as follows: September 10th, 1929, $150.00; March 10th, 1930, $150.00; September 10th, 1930, $150.00; March 10th, 1931, $150.00; and September 10th, 1931, $150.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of maturity thereof of the sum of $750.00.

(e) Of the issue of April 1st, 1926, two bonds aggregating $2,000.00, drawing interest at the rate of 6% per annum from date, none of the principal of said bonds having yet matured but interest coupons thereon having matured as follows: October 1st, 1929, $60.00; April 1st, 1930, $60.00; October 1st, 1930, $60.00; April 1st, 1931, $60.00, and October 1st, 1931, $60.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity
72 thereof of the sum of $300.00.

(f) Of the issue of April 20th, 1923, twenty-five bonds, aggregating $25,000.00, drawing interest at the rate of 6% per annum from date, none of the principal

of said bonds having yet matured, but interest coupons thereon having matured as follows: October 20th, 1929, $750.00; April 20th, 1930, $750.00; October 20th, 1930, $750.00 and April 20th, 1931, $750.00, making an aggregate of past due and delinquent interest by reason of the non-payment of interest coupons at dates of the maturity thereof of the sum of $3,000.00.

5.

Intervener and its predecessor in title from whom it acquired said bonds and interest coupons in due course, and for value, became the owners thereof prior to the respective maturities thereof.

6.

This intervener refers to and adopts as its own and as a part hereof all the allegations of the Amended Original Petition of the plaintiffs in this cause so far as the same may be material and pertinent to the cause of action existing in behalf of this Intervener as hereinabove asserted and alleged.

Premises considered, Intervener prays that it have judgment against the defendant city for the amount of all past due interest coupons held and owned by this intervener; that it have judgment establishing the status of said bonds and bond issues and the validity of the same as valid outstanding obligations against said city.

Intervener prays for costs of suit, and for such other and further relief, general and special, to which in the premises it may be entitled.

McBRIDE, O'DONNELL & HAMILTON,
Attorneys for Intervener, Brotherhood of Locomotive Firemen and Enginemen.

Filed October 14th, 1931.

73 In the District Court of the United States of America Northern District of Texas Abilene Division.

Charles P. Bullard, et al, Plaintiffs,
vs. No. 1008 At Law.
City of Cisco, Texas, Defendant.

To the Honorable James C. Wilson, Judge of said Court:

Leave of the Court having been first had and obtained, now comes S. M. Berry, President, J. A. Phillips, Senior Vice President, and J. E. Rogers, General Secretary and Treasurer, Insurance Committee as Trustees, acting for and on behalf of the Mutual Benefit Department of the Order of Railway Conductors of America, a voluntary unincorporated association, and complaining of the defendant, City of Cisco Texas, files this petition of intervention, and for cause of action alleges:

I.

That S. M. Berry, J. A. Phillips, and J. E. Rogers are each citizens of the State of Iowa and are duly authorized and empowered to file and prosecute this petition of intervention in the capacity as hereinbefore alleged, and that the Order of Railway Conductors of America, a voluntary unincorporated association, has its headquarters and principal place of business at Cedar Rapids in the State of Iowa.

That the defendant, the City of Cisco Texas, is and at all times mentioned in this petition has been a municipal corporation, organized and existing under the general laws of the State of Texas, and has at all past dates hereinafter mentioned up to the present date been acting under a special charter, having its

situs in and being a citizen of Eastland County, Texas, which is within the Abilene Division of the District Court of the United States, for the Northern District of Texas.

That this is a suit between citizens of different states and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of $3,000.00.

74 II.

That the bonds and interest coupons hereinafter set out and described as being held and owned by intervener, constitute, and are, a part of the same issue and or issues of bonds issued by the defendant, City of Cisco Texas on the dates alleged, and are a part of the same issue and/or issues of bonds issued by the defendant, City of Cisco Texas, which are held and owned by the plaintiffs as alleged and set out by plaintiffs in their Second Amended Original Petition filed in the above numbered and entitled cause.

III.

That the Order of Railway Conductors of America is now the owner and holder in due course, and for value, and prior to the maturities thereof, the various and sundry bonds and obligations and coupons issued by the City of Cisco on various and sundry dates, and more fully described and set out as follows, to-wit:

A. Bonds issued May 10, 1921, of the par value of $30,000.00, denominated City of Cisco Water Works extension funding bonds numbered consecutively from forty-six (46) to Sixty (60) inclusive, and from sixty one (61) to seventy-five (75) inclusive in denomination of $1,000.00, bearing interest at the rate of six per

cent per annum, payable on May 10th, and November 10th in each year, the principal of the bonds numbered 46 to 60 inclusive being due May 10, 1944, and the principal of the bonds numbered 61 to 75 inclusive being due May 10th, 1945.

B. Bonds issued by the City of Cisco Texas, the defendant, on April 20th, 1923, of the par value of $35,000.00, said bonds being denominated
75 City of Cisco funding bonds, series 1 to 1923, numbered consecutively from 181 to 195 inclusive, the principal of such bonds being due April 20th, 1955; and bonds numbered consecutively from 196 to 210 inclusive, the principal of which will be due April 20th, 1956, and bonds numbered consecutively from 211 to 215 inclusive, the principal of which will be due April 20, 1957, and each and every of said bond being in the denomination of ($1,000.00) One Thousand Dollars, and bearing interest from date at the rate of six per cent per annum, payable April 20th and October 20th in each year.

C. Bonds issued by the City of Cisco Texas on August 20, 1923, denominated City of Cisco Water Works Funding Bonds, series 1923, said bonds being of the par value of Twenty-Five Thousand ($25,000) Dollars, and being those bonds numbered consecutively from 111 to 115 inclusive, the principal of which will be due Feb. 20, 1955, and those bonds numbered consecutively from 141 to 150 inclusive, the principal of which will be due Feb. 20, 1958, and those bonds numbered consecutively from 151 to 160 inclusive, the principal of which will be due Feb. 20, 1959, each and every of which bond is in the denomination of $1,000.00, and bears interest at the rate of six per cent per annum, said interest being payable on the 20th day of February, and on the 20th day of August in each year.

IV.

That the time of the execution and issuance by the City of Cisco Texas of the various and sundry bonds now owned and held by the Order of Railway Conductors of America, as hereinbefore alleged, the City of Cisco Texas executed and issued coupons to evidence and represent the interest payment on each said respective bond as therein provided; that each and every of said principal bonds, and each and every of said interest coupon were in form and in
76 fact negotiable instruments due and payable to bearer; that each and every of said principal bond, and each and every of said interest coupon now owned and held by the Railway Conductors of America were duly executed by the Mayor, City Secretary and Treasurer of said City of Cisco Texas, being thereunto duly authorized in law by the Constitution of the State of Texas, and by the terms of the charter of said City. That prior to the sale by said City of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, and his certificate issued to that effect; that at the time of the authorization, and prior to the issuance or sale of said bonds, or interest coupons thereon, the City Commission of said city, as authorized and required by law, and the Constitution of the State of Texas, did levy a continuing direct annual ad valorem tax on all tax property in said city, sufficient to pay the interest on said bonds, and to create a sinking fund sufficient to redeem the principal of said bonds as same should mature.

That upon the issuance of the aforesaid bonds and interest coupons, after the registration and approval thereof as aforesaid, and prior to the respective matur-

ities thereof, all of said bonds, with the interest coupons thereto, were sold by said city for a consideration in each instance such as required by law, and the consideration, in cash, duly received therefor by said city and the proper officials thereof.

V.

That the Order of Railway Conductors of America became, and is now the owner and holder in due course, and for value before maturity thereof, of the interest coupons to the various and sundry bonds hereinbefore set out, and now owned by it; that the said Order of Railway Conductors of America is now the owner of the following described interest coupons which have matured and are now past due and unpaid, to-wit:

77 A. Past due interest coupons aggregating $3600.00, being due on those bonds issued on the 10th day of May, 1921, $900.00 of said interest coupons thereon having matured on each of the following dates, to-wit: November 10th, 1929, May 10th, 1930, November 10th, 1930, May 10th, 1931,

B. Past due interest coupons on the bonds issued April 20th, 1923, said interest coupons aggregating $5,250.00, and maturing and becoming due in the amount of $1050.00 on each of the following dates, to-wit: October 20th, 1929, April 20th, 1930, October 20, 1930; April 20th, 1931, October 20th, 1931,

C. On those bonds issued August 20th, 1923, past due interest coupons thereon aggregating $3,750.00, Seven Hundred Fifty Dollars ($750.00) thereof having matured on each of the following dates, to-wit: August 20th, 1929, February 20th, 1930, August 20th, 1930, and February 20th, 1931, and August 30th, 1931.

VI.

That the Order of Railway Conductors of America is now the owner and holder of bonds issued by the City of Cisco Texas, the total principal amount of which aggregate $90,000.00, and is the owner and holder of past due interest coupons on said bond aggregating $12,600.00. That past due interest coupons being unpaid, demand has been made on the City of Cisco Texas for the payment of said past due interest coupons; the payment of same has been refused.

Wherefore, Intervener prays that it have judgment for and on behalf of the Mutual Benefit Department of the Order of Railway Conductors of America against the defendant, City of Cisco Texas, for the amount of the past due and unpaid interest coupons held and owned by the Order of Railway Conductors
78 of America, as aforesaid, together with interest on said interest coupons from the dates of their respective maturities as provided therein, and in all respects establishing the status of said bonds and bond issues, and the validity of said bonds as valid outstanding obligations against said City of Cisco Texas, and that intervener be awarded such other relief, general or special, to which it may appear entitled, and it prays for costs of suit.

RAYMOND E. BUCK,
By J. H. TRICKEY,
RAYMOND E. BUCK,
Attorney for Intervener.

Filed October 30th, 1931.

79 (Title Omitted.)

Comes now United Mutual Life Insurance Company, a Life Insurance Corporation, incorporated and existing under and by virtue of the laws of the United States of America, and having its office and principal place of business in the City of Indianapolis, Indiana, and with leave of the Court first had and obtained, files this its Plea of Intervention, in the above numbered and entitled cause, and for cause of action against Defendant, City of Cisco, Texas, alleges the following:

I.

This Intervener is a resident and citizen of the State of Indiana. The Defendant, City of Cisco, is and at all times heretofore has been a municipal corporation, organized and existing under the General Laws of the State of Texas, and since July 28, 1919, has been incorporated and acting under a Home Rule Charter, as provided by Section 5, Article 11, Constitution of Texas, and the general statutes of the State enacted pursuant thereto. The Defendants, are residents and citizens of the County of Eastland, State of Texas, which is within the Abilene Division of the District Court of the United States, for the Northern District of Texas.

80 II

This is a suit between citizens of different States, it being a suit between a resident of the City of Indianapolis, State of Indiana, as plaintiff, Intervener, against the City of Cisco, Texas, J. T. Berry, of Cisco, Texas, being its Mayor, which is a citizen of the State of Texas, and has its place of residence in the Abilene Division of the District Court, of the United States, for

the Northern District of Texas, and the matter in controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00).

III.

(a) That heretofore, to-wit, on the 24th day of November, 1920, the defendant, City of Cisco, did issue and execute its bonds denominated "The City of Cisco Water Works Extension Funding Bonds, Series 1", in the aggregate sum of Three Hundred Thousand Dollars ($300,000.00), said bonds being numbered consecutively from One (1) to Three Hundred (300) inclusive, in denomination of One Thousand ($1,000.00) each, bearing interest at the rate of six per cent per annum payable May and November 24th, in each year, principal payable serially on November 24th in each of the years 1950 to 1960, inclusive.

(b) That heretofore, to-wit, on the 10th day of March, 1920, the defendant, City of Cisco, did issue and execute its bonds denominated "City of Cisco Water Works bonds", in the aggregate sum of Five Hundred Thousand ($500,000.00) Dollars, said bonds being numbered consecutively from One (1) to Five Hundred (500), inclusive, in denominations of One Thousand ($1,000.00) Dollars each, bearing interest at the rate of six per cent per annum, payable September 10th, and March 10th, in each year, principal payable serially on March 10th in each of the years 1923 to 1960, inclusive.

(c) That heretofore, to-wit, on the 10th day of May, 1925, the defendant City of Cisco did issue and execute its bonds denominated "City of Cisco Funding

Bond Series 1925", in the aggregate sum of
81 Three Hundred Thirty Four ($334,000.00)
Thousand Dollars, said bonds being numbered consecutively from One (1) to Three Hundred Thirty-four (334) inclusive, in denominations of One Thousand Dollars ($1,000.00) each, bearing interest at the rate of six per cent per annum, payable May 10 and November 10th in each year principal payable serially on May 10th in each of the years 1931 to 1965, inclusive.

(d) That heretofore, to-wit, on the 1st day of August, 1925, the defendant City of Cisco, issued and executed its bonds denominated "City of Cisco Funding Bonds, Series 2 of 1925, in the aggregate sum of One Hundred Thousand Dollars ($100,000.00), said bonds being numbered consecutively from One (1) to One Hundred (100) inclusive, in denominations of One Thousand ($1,000.00) Dollars each, bearing interest at the rate of six per cent per annum, payable February 1, and August 1, in each year, principal payable serially on August 1st, in each of the years 1946 to 1965, inclusive.

IV.

At the time of the issuance of said bonds hereinabove described, coupons were executed and attached to each of the said bonds by said City to evidence and represent the interest payment on said respective bonds as therein provided. Each and all of said principal bonds and each and all of said interest coupons were in form and in fact negotiable instruments, due and payable to bearer. That each and all of said principal bonds, and each and all of said interest coupons were duly executed by the Mayor, City Secretary and Treasurer of said City, who were duly authorized

under the laws and Constitution of the State of Texas, and by the terms of the City Charter of said City, so to execute the same.

82 That prior to the issuance or sale and delivery of any of said principal bonds or interest coupons thereon, the same were duly registered with the Comptroller of Public Accounts of the State of Texas, and approved as valid by the Attorney General of the State of Texas, whose certificate approving the same was duly issued at the time of the authorization and prior to the issuance of sale and delivery of said bonds and interest coupons thereon, and that prior to the registration and approval of the said bonds as aforesaid, and prior to their issuance or sale and delivery, the City Commission of said City as authorized and required by law and Constitution of the State of Texas, did levy a continuing direct, annual advalorem tax on all taxable property in said City of Cisco sufficient to pay the interest on said bonds and to create a sinking fund sufficient to redeem the principal of said bonds at maturity thereof.

That upon the issuance of said bonds or interest coupons, after the registration and approval thereof, as aforesaid, and prior to the respective maturities thereof, and also prior to the maturities of any one of the interest coupons hereinafter described as being past due, all of said bonds with the interest coupons attached thereto, were sold, or were issued and delivered by said City, and for which the City received full value and consideration; and that each of the said bonds, on the face thereof, contain recitals substantially as follows:

"And it is hereby Certified and Recited that provision has been made, as required by the Constitution

and laws of the State of Texas, for the levy and collection of an annual ad valorem tax sufficient to pay the interest on said bonds as the same shall become due to pay the principal sum at maturity; that all acts, conditions and things required to be done precedent to and in the issuance of this bond, have been properly done and performed and have happened, in regular and due time, form and manner as required by the Constitution and laws of the State of Texas and the City Charter of the City of Cisco, Texas; and that the total indebtedness of said City, including this bond and the series of which it is a part, does not exceed any constitutional or statutory limitation."

And which said recitals, as made in each of said bonds, were voluntarily made by said City through its duly qualified public officers, who were authorized to make the same.

That said bonds with interest coupons owned by this intervener and being a part of said Water Works Extension Funding Bonds Series 1, dated November 24, 1920, as afore alleged, are as follows:

Number	Maturity Date	Amount
264	November 24, 1959	$1,000.00
275; 280 to 294, inclusive	November 24, 1960	$16,000.00

Said bonds aggregating $17,000.00 are not due, as appears from the above description thereof, but the interest coupons thereon are due and unpaid, as follows: Interest coupons due November 24, 1929, May 24, 1930, November 24, 1930 and May 24, 1931, are now at this time past due and unpaid, and altho and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers

to pay the same, they have declined and refused to pay them, or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $2,040.00, being $510.00 due November 24, 1929, $510.00 due May 24, 1930, $510.00 due November 24, 1930, and $510.00 due May 24, 1931.

84 Intervener further represents to the Court that the said bonds and interest coupons owned by this intervener and being a part of said City of Cisco Water Works Bonds dated March 10, 1920, as above alleged, are as follows:

Number	Maturity Date	Amount
127-128	March 10, 1934	$2,000.00
139 to 141, Inc	March 10, 1935	3,000.00
142 to 146, Inc.	March 10, 1936	5,000.00

Said bonds aggregating $10,000.00 are not due as appears from the above description thereof, but the interest coupons thereon are due and unpaid as follows: Interest coupons due September 10, 1929, March 10, 1930, September 10, 1930, March 10, 1931, and September 10, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers to pay the same, they have declined and refused to pay them, or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $1500.00, being $300.00 due September 10, 1929, $300.00 due March 10, 1930, $300.00 due September 10, 1930, $300.00 due March 10, 1931, and $300.00 due September 10, 1931.

This intervener further represents unto the Court that said bonds and interest coupons owned by this

intervener and being a part of the said City of Cisco Funding Bonds Series 1925, dated May 10, 1925, as above alleged, are as follows:

Number	Maturity Date	Amount
266 to 269, Inc.	May 10, 1960	$4,000.00
306 to 308, Inc.	May 10, 1963	$3,000.00
	May 10, 1964	3,000.00
330 to 333, Inc.	May 10, 1965	4,000.00

84 Said bonds aggregating $14,000.00 are not due, as appears from the above description thereof, but the interest coupons thereon are due and unpaid, as follows: Interest coupons, due November 10, 1929, May 10, 1930, November 10, 1930, and May 10, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant City and its officers to pay the same, they have declined and refused to pay them or any part thereof, and there is now due and owing this intervener on said past due interest coupons the sum of $1,680.00, being $420.00 due November 10, 1929, $420.00 due May 10, 1930, $420.00 due November 10, 1930 and $420.00 due May 10, 1931.

Intervener further represents unto the Court that of the issue known as "City of Cisco Funding Bonds, Series 2, 1925", dated August 1, 1925, this intervener owns bond No. 62, for the sum of $1,000.00, due August 1, 1958, and that said bond is not due, but the interest coupons thereon are due and unpaid, as follows: Interest coupons due August 1, 1929, February 1, 1930, August 1, 1930, February 1, 1931, and August 1, 1931, are now at this time past due and unpaid, and although and notwithstanding this intervener has repeatedly made demand of the defendant

City and its officers to pay the same, they have declined and refused to pay said coupons, or any part thereof, and that there is now due and owing this intervener on said past due interest coupons the sum of $150.00, being $30.00 due August 1, 1929, $30.00 due February 1, 1930, $30.00 due August 1, 1930, $30.00 due February 1, 1931, and $30.00 due August 1, 1931.

And this intervener further represents unto the Court that said bonds last herein above described and said unpaid coupons thereon, in due course, prior to the maturity thereof, and for a valuable consideration, were purchased by and became the property of this intervener, and intervener is now the owner and holder of the same.

85 Premises considered, intervener prays that it have judgment against the defendant City for the amount of all past due interest coupons held and owned by this intervener, as above alleged, and that it have judgment establishing the status of said bonds and declaring them valid as outstanding obligations against the said City of Cisco, and intervener prays for costs of suit and for such other and further relief, general and special to which in the premises it may be entitled.

RAYMOND E. BUCK,
J. H. TRICKEY;
W. P. DUMAS,

Attorneys for Intervener United Mutual Life Insurance Company.

Filed November 5th, 1931.

86 BILL OF EXCEPTIONS.

(Title Omitted.)

Be it remembered that on the trial of the above numbered and entitled cause, on the 12th day of November, 1931, the parties hereto, to sustain their respective contentions, offered in evidence.

The plaintiff introduced in evidence the following:

(a). Past due coupons on City of Cisco Water Works Bonds, dated March 10, 1920, aggregating $15,720.00, $390.00, thereof having matured March 10, 1929, $2,970.00 thereof having matured Sept. 10, 1929, and $3,090.00 thereof having matured on March 10, 1930, Sept. 10, 1930, March 10, 1931, and September 10, 1931, respectively, and also $2,000.00 of the principal of said bonds having matured March 10, 1930.

(b.) Past due interest coupons on City of Cisco Paving Funds Bonds, Series one, bearing date July 15, 1920 aggregating $4,650.00, $690.00 thereof having matured on July 15, 1929, $1,050.00 thereof having matured on January 15, 1930, and July 15, 1930, respectively, and $930.00 thereof having matured on January 15, 1931 and July 15, 1931, respectively; also $10,000 of the principal of said bonds which matured as follows: $5,000.00 on July 15, 1930, and $5,000.00 on July 15, 1931.

87 (c.) Past due interest coupons on City of Cisco Waterworks Extension Funding Bonds, Series 1, bearing date November 24, 1920, aggregating $7,920.00, $180.00 thereof having matured May 24, 1929, $1,800.00 thereof having matured on

November 24,1929, and $1,980.00 thereof having matured on May 24, 1930, November 24, 1930, and May 24, 1931, respectively.

(d.) Past due interest coupons on City of Cisco Waterworks Extension Funding Bonds, dated May 10, 1921, aggregating $30,900.00, $2,550.00 thereof having matured May 10, 1929, $6,480.00 thereof having matured November 10, 1929, and $7,290.00 thereof having matured on each of the dates May 10, 1930, November 10, 1930, and May 10, 1931.

(e.) Past due interest coupons on City of Cisco Waterworks Bonds, Series 2, dated January 15, 1922, aggregating $39,450.00, $90.00 thereof having matured on January 15, 1929, $7,500.00 thereof having matured on July 15, 1929; $7,830.00 thereof having matured on January 15, 1930, and $8,010.00 thereof having matured on each of the following dates: July 15, 1930, January 15, 1931, and July 15, 1931.

(f.) Past due interest coupons on City of Cisco Funding Bonds, series of 1922 dated June 1, 1922, aggregating $6,300.00 $1,020.00 thereof having matured June 1, 1929, and $1,320.00 thereof having matured on December 1, 1929, June 1, 1930, December 1, 1930, and June 1, 1931, respectively.

(g.) Past due interest coupons on City of Cisco Waterworks Funding Bonds, series of 1922, dated December 1, 1922, aggregating $13,050.00, $150.00 thereof having matured January 15, 1929, $2,340.00 thereof having matured July 15, 1929, and $2,640.00 thereof having matured January 15, 1930, July 15, 1930, January 15, 1931, and July 15, 1931, respectively.

(h.) Past due interest coupons on City of Cisco Funding Bonds, Series 1 of 1923, dated April 20, 1923, aggregating $16,230.00, $1,050.00 thereof having matured April 20, 1929, $3,660.00 thereof having matured October 20, 1929, and $3,840.00 thereof having matured on April 20, 1930, October 20, 1930, and April 20, 1931, respectively.

88 (i.) Past due interest coupons on City of Cisco Waterworks Funding Bonds, series 1923, dated August 20, 1923, aggregating $15,180.00, $60.00 thereof having matured February 20, 1929, $2,760.00 thereof having matured August 20, 1929, and $3,090.00 thereof having matured on February 20, 1930, August 20, 1930, February 20, 1931, and August 20, 1931, respectively.

(j.) Past due interest coupons on City of Cisco Funding Bonds, Series 1924, dated February 25, 1924, aggregating $17,610.00, $3,450.00 thereof having matured August 25, 1929, and $3,540.00 thereof having matured on February 25, 1930, August 25, 1930, February 25, 1931, and August 25, 1931, respectively.

(k.) Past due interest coupons on City of Cisco Funding Bonds, Series 2 of 1924, dated August 5, 1924, aggregating $24,990.00, $90.00 thereof having matured on February 5, 1929, $4,740.00 thereof having matured on August 5, 1929, and $5,040.00 thereof having matured on each of the following dates; February 5th and August 5th, 1930, and February 5th and August 5th, 1931.

(l.) Past due interest coupons on City of Cisco Funding Bonds, dated December 20, 1924, aggregating $1,650.00, $330.00 thereof having matured on each of the dates of June 20th and December 20th, 1929, June 20th and December 20th, 1930, and June 20th, 1931.

(m.) Past due interest coupons on City of Cisco Funding Bonds, Series 1925, dated May 10, 1925, aggregating $12,480.00, $510.00 thereof having matured on May 10, 1929, and $2,970.00 thereof having matured on November 10, 1929, and $3,000.00 thereof having matured on each of the dates of May 10th and November 10th, 1930, and May 10th, 1931.

89 (n.) Past due interest coupons on City of Cisco Funding Bonds, series 2 of 1925, dated August 1, 1925, aggregating $10,740.00, $30.00 thereof having matured on February 1, 1929, $2,070.00 thereof having matured on August 1, 1929, and $2,160.00 thereof having matured thereon on each of the dates of February 1st and August 1st, 1930, and February 1st and August 1st, 1931.

(o.) Past due interest coupons on City of Cisco Funding Bonds, series 1926, bearing date April 1, 1926, aggregating $21,270.00, $180.00 thereof having matured on each of the dates of October 1, 1927, and April 1 and October 1, 1928, $390.00 thereof having matured on April 1, 1929, $3,900.00 thereof having matured on October 1, 1929, and $4,110.00 having matured thereon on each of the dates of April 1, 1930, October 1, 1930, and April 1st and October 1st, 1931.

(p.) Past due interest coupons on City of Cisco Funding Bonds, Series 2 of 1926, dated September 10, 1926, aggregating $15,870.00, $3,000.00 thereof having matured on September 10th, 1929, $3,150.00 thereof having matured on March 10, 1930, and $3,240.00 having matured thereon on each of the dates of September 10th, 1930, and March 10th and September 10th, 1931.

(q.) Past due interest coupons on City of Cisco Waterworks Refunding Bonds, Series 1927, dated May

2, 1927, aggregating $11,730.00, $143.75 thereof having matured on November 2, 1928, $1,581.25 thereon having matured on May 2, 1929, $2,415.00 thereof having matured on November 2nd, 1929, and $2,530.00 thereof having matured thereon on each of the dates of May 2nd, 1930, November 2nd, 1930, and May 2, 1931.

(r.) Past due interest coupons on City of Cisco Refunding Bonds, Series of 1928, dated March 10, 1928, aggregating $15,895.00, $2,970.00 thereof having matured on September 10, 1929, $3,190.00 thereof having matured on March 10, 1930, and $3,245.00 thereof having matured on each of the dates September 10, 1930, March 10, 1931, and September 10, 1931.

90 (s.) Past due interest coupons on City of Cisco Refunding Bonds, Series 2 of 1928, dated November 15, 1928, aggregating $8,965.00, $2,860.00 thereof having matured November 15, 1929, and $2,035.00 having matured thereon on each of the dates of May 15, and November 15th, 1930, and May 15th, 1931.

(t.) Past due interest coupons on City of Cisco Sanitarium and Park Bonds, dated February 15, 1921, aggregating $1,675.00, $225.00 thereof having matured on August 15, 1929, $375.00 thereof having matured on February 15th, 1930, $375.00 thereof having matured on February 15, 1931, and $325.00 thereof on August 15th, 1931, also $2,000.00 of the principal of said bonds, having matured February 15, 1931.

(u.) Past due interest on City of Cisco Waterworks Bonds, dated May 10, 1902, aggregating $1,000.00, $250.00 thereof having matured thereon on each of the dates of January 1, 1930, July 1, 1930, January 1, 1931, and July 1, 1931.

The total amount of past due interest coupons on said bonds introduced by plaintiffs was $355,787.50,

and the total amount of past due bonds introduced by the plaintiffs was $14,000.00, making an aggregate amount of past due bonds and past due interest coupons on said bonds $369,787.50.

A copy of one of each series of bonds and coupons, the respective portions of which, as above indicated, were introduced in evidence by the plaintiffs, is by agreement of counsel, attached hereto and they are numbered respectively (a) to (u) inclusive, for purposes of identification.

The plaintiffs also introduced in evidence twenty-one certified copies of opinions of the Attorney General of Texas relating to and approving as valid, each of said above described bonds.

Plaintiffs also introduced in evidence twenty-one certified copies of transcripts of proceedings by the City of Cisco relating to said bonds, to which transcripts of proceedings the above mentioned
91 respective copies of the opinions of the Attorney General of Texas related and referred to in approving said bonds.

The plaintiffs also introduced in evidence the following affidavit of Charles P. Bullard:

In the District Court of the United States for the Northern District of Texas, Abilene Division.

Charles P. Bullard, et al, Plaintiffs.
vs. No. 1008, At Law.
City of Cisco, Texas, et al, Defendants.

State of New York,
County of New York.

Charles P. Bullard, a plaintiff in the above numbered and entitled cause, first being duly sworn made oath as follows:

First.

That he, John R. Brandon, Henry E. Poor and Robert D. White are the holders of all the bonds of the City of Cisco described in the petition of the plaintiffs in this cause.

Second.

That each and all of said bonds, which are payable to bearer, were transferred to the plaintiff by actual delivery thereof, and are now on deposit in the Liberty National Bank & Trust Company of New York, being there held in the name of, for and subject to the control dominion and disposition of the plaintiffs.

92 Third.

That no bond owned by any citizen of Texas was transferred to the plaintiffs, and the plaintiffs hold no bonds transferred by any citizen of Texas, but that all of the bonds transferred and delivered to the plaintiffs were delivered by owners who resided in states other than the State of Texas.

Fourth.

That there were heretofore transferred and delivered to these plaintiffs, among the bonds and coupons sued upon, bonds upon which matured and past due coupons exceeded $3,000.00, as follows:

(a) From George G. Averill, Waterville, Maine, bonds were transferred upon which the past due coupons aggregate $5,403.75;

(b.) From The Title & Guaranty Trust Company, Cincinnati, Ohio, bonds were transferred upon which the past due coupons aggregate $3,120.00; and

(c.) From E. Schier Welsh, Boston, Massachusetts, bonds were transferred upon which the past due coupons aggregate $5,590.00

Fifth.

That all of the bonds sued upon and described in plaintiffs' petition were delivered to plaintiffs by the respective holders prior to the filing of the above numbered and entitled suit, and have continued since the filing of said suit in the hands of the plaintiffs, and subject to the exclusive control, dominion and ownership of plaintiffs under the terms of the agreement dated January 3, 1930, in which the plaintiffs, as the owners and holders of said bonds and coupons, it was agreed, should demand, collect and receive all moneys due or payable on said bonds and coupons, and under which agreement the full title to all the bonds and coupons sued upon was transferred and delivered to the plaintiffs, with full and complete ownership.

(Signed) CHARLES P. BULLARD.

Subscribed and sworn to before me, the undersigned authority in and for the County of New York, State of New York, by the said Charles P. Bullard, this 22nd day of September, 1930.

(Signed) HORACE H. SEARS,
Notary Public, County of New York, State of New York.

93 The plaintiffs introduced in evidence paragraph 13 of the sworn answer of the City of Cisco in cause No. 782, in Equity, styled C. P. Bullard, et al. vs. City of Cisco, et al, as follows:

"The defendants admit that after the issuance of the aforesaid bonds and interest coupons, and after the registration and approval thereof the bonds and interest coupons were sold by the City for a consideration, and the consideration was duly received therefor by the City and the proper officials thereof."

94 Exhibit "X"— Bondholders Agreement, Dated 1/3/30, omitted from the printed record, being heretofore copied at page 21.

* * * * * * * *

95 The defendant introduced in evidence by agreement between the parties certain parts of the deposition of Charles P. Bullard, taken in equity cause No. 782, styled Charles P. Bullard, et al, vs. City of Cisco, as follows:

"Interrogatory No. 4: Did the plaintiffs acquire the title to the bonds described in their bill of complaint under some kind of agreement or contract?"

Answer: "Yes".

Interrogatory No. 5: "Please attach to this set of depositions and have the officer taking the interrogatories to properly identify same, any agreement entered into between plaintiffs and the person from whom they acquired titles to the bonds described in plaintiffs' bill of complaint."

Answer: "I hand you a copy of the bondholders agreement dated January 3rd, 1930". (Copy of printed agreement marked and attached).

Interrogatory No. 19: "The plaintiffs allege in their bill of complaint the following:

'That plaintiffs or those whose titles they have acquired said bonds and interest coupons in due course and for value prior to the maturity thereof'.

Please give the names of the persons, firms or corporations from whom the transferrors of the titles of the bonds to the plaintiffs acquired said bonds, the dates they acquired them, the amounts acquired, and the sums of money paid therefor."

Answer: "I have no knowledge of these facts."

Interrogatory No. 6: "Did the plaintiffs write any letters to any of the persons, firms or corporations from whom you acquired title to the bonds described in plaintiffs' bill of complaint, requesting that they sign a contract and deliver the titles to the plaintiffs to the bonds they hold?"

96 Answer: "Yes".

Interrogatory No. 7: "If you state that the plaintiffs did write letters to the owners of the bonds asking that they deliver the titles to plaintiffs, please attach to these interrogatories all the letters written by the plaintiffs, and have the officer taking these depositions to properly identify such letters attached."

Answer: "I hand you two printed letters." (Letters received and marked exhibits 2 and 2A)

Upon the conclusion of the above and foregoing evidence, the Court entered the judgment hereinabove set forth on page .... hereof, on the .... day of November, 1931, dismissing plaintiff's suit for lack of jurisdiction.

To the action of the Court in entering said judgment the plaintiffs then and there in open Court duly ex-

cepted, and tender this their bill of exceptions and pray that the same be approved by the Court and duly ordered filed as a part of the record in this case.

CALDWELL & RAYMOND,
DEXTER HAMILTON,
McBRIDE, O'DONNELL & HAMILTON,
(Signed) By DEXTER HAMILTON,
Attorneys for Plaintiffs.

Agreed to by the defendant this the .... day of January, 1932.

(Signed) J. J. BUTTS,
Of BUTTS & WRIGHT,
Attorneys for Defendant.

Filed January 30th, 1932.

This bill of exceptions examined, approved and ordered filed as a part of the record in this cause, this the 28 day of January, 1932.

(Signed) JAMES C. WILSON,
Judge.

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97 (Title Omitted.)

On this the 12th day of November, 1931, came on to be heard and considered the above numbered and entitled cause, wherein Chas. P. Bullard, John R. Brandon, Henry E. Poor, and Robert D. White are plaintiffs, the Reserve Loan Life Insurance Company, a life insurance corporation, the Brotherhood of Locomotive Firemen and Enginemen, a corporation, the Railway Conductors of America, a corporation, and United Mutual Life Insurance Co., a corporation, are

interveners, and the City of Cisco, Texas, a municipal corporation, J. T. Mayor as Mayor of said City of Cisco, J. R. Burnett, W. J. Donovan, Geo. D. Fee, J. T. Elliott, and Joe Clements, as Commissioners of said City of Cisco, and J. B. Cate, Secretary of said City of Cisco, are defendants, and came on to be heard and considered the exception of the defendants to the pleas of intervention and the exceptions of the defendants to plaintiffs' amended original petition last filed herein, and the Court after having heard and considered said exceptions is of the opinion that all exceptions should be overruled except Exception No. 2, wherein the defendants except to that part of plaintiffs' amended petition herein which seeks equitable relief by having the validity of certain bonds and coupons established by a decree of this Court, and this exception was sustained by the Court; and the defendants duly excepted to the action of the Court in overruling all of their exceptions to the pleas of intervention and the exceptions to plaintiffs' amended petition; and there came on to be heard and considered the exceptions of the plaintiffs as set out in their supplemental petition, and the Court,
98 after hearing and considering said exceptions, sustained said exceptions, to which action of the Court in sustaining said exceptions, the defendants duly excepted, whereupon all parties announced ready for trial; a jury was expressly waived by all parties by written stipulation entered of record in this cause, and all matters of fact as well as of law submitted to the Court.

The Court, after having heard the pleadings read, the evidence introduced, and the argument of counsel, is of the opinion that this Court does not have jurisdiction to hear and determine this cause, and that the same should be dismissed because of want of jurisdiction.

It is therefore ordered, adjudged and decreed that this cause be, and the same is hereby, dismissed for lack of jurisdiction and without prejudice, at plaintiffs' cost, except that all costs incurred by the respective interveners herein be adjudged against them, and that execution issue against plaintiffs and interveners for all costs herein incurred, and for all of which let execution issue.

Plaintiffs and each intervener duly excepted to the Court's action in dismissing this cause and gave notice of appeal to the Circuit Court of Appeals of the United States for the 5th Circuit, at Fort Worth, Texas.

JAMES C. WILSON,
Judge.

Filed November 18th, 1931.

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99 PLAINTIFFS' NOTICE OF APPEAL.

(Title Omitted.)

To Messrs. Butts & Wright, Attorneys of Record for the City of Cisco, Defendant:

You will take notice that plaintiffs, Chas. P. Bullard, John R. Brandon, Henry F. Poor and Robert D. White, in the above numbered and entitled cause, at Law, pending in the District Court of the United States for the Northern District of Texas, Abilene Division, appeal to the Circuit Court of Appeals for the Fifth Circuit, from the judgment and order of the Court entered in said cause on the 12th day of November, 1931, dismissing the suit filed by the plain-

tiffs upon the ground that the United States District Court has no jurisdiction in said cause.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
Of Counsel,
Attorneys of record for plaintiffs, Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White.

Filed December 22nd, 1931.

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100 (Title Omitted.)

The plaintiffs in this suit, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, in connection with their appeal, make the following assignments of error committed upon the trial of this cause, and which are fundamental errors apparent upon the fact of the record, to-wit:

First Assignment of Error.

The plaintiffs' Petition alleging, and the record conclusively showing without contradiction, that the United States District Court has jurisdiction of both the parties and the subject matter of the case, the order and judgment of dismissal for want of jurisdiction is fundamental error.

Second Assignment of Error.

There being no proof that the title to the bonds sued upon by the plaintiffs was reposed in them for the

purpose of creating jurisdiction, where none existed in the assignors, the order of dismissal was fundamental error, since it was based solely upon the proposition that plaintiffs acquired title from the assignors to create federal jurisdiction as to the amount in controversy.

Third Assignment of Error.

The bonds and coupons sued upon being negotiable instruments, payable to bearer, in the hands of the plaintiffs under previous delivery to them, and there being no evidence in the record that they were transferred to plaintiffs for the sole purpose of creating federal jurisdiction, the judgment of the Court dismissing the cause for want of jurisdiction is fundamentally erroneous.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
Attorneys for Plaintiffs.

Filed January 4th, 1932.

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101 (Title Omitted.)

Know all men by these presents: That Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, plaintiffs in the above numbered and entitled cause, as Principals, and Dallas Title & Guaranty Company, a surety company organized and existing under the laws of the State of Texas, and authorized to do business in Texas, as Surety, hereby acknowledge themselves to owe and to be bound to pay to the City of Cisco, Texas, defendant in the above numbered and entitled cause, the sum of Three Hundred & No/100 Dollars ($300.00), conditioned

that the above bound Chas. P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, who are appealing from the judgment of the Court in the above numbered and entitled cause, rendered on November 12th, 1931, dismissing this suit and adjudging the United States District Court for the Northern District of Texas to be without jurisdiction of said cause, shall prosecute their appeal to effect and answer all costs if they fail to make such appeal good.

Witness the signatures of said parties and their surety, this the 21st day of December, 1931.

CHAS. P. BULLARD,
JOHN R. BRANDON,
HENRY E. POOR, and
ROBERT D. WHITE,
By CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
(Seal) Of Counsel. Their Attorneys
of Record, Principals
DALLAS TITLE & GUARANTY COMPANY,
By C. L. ALLEN,
Vice-President. Surety.

Attest:

S. C. WHITELERY,
Asst. Secretary.

Approved, this December ...., 1931.

JAMES C. WILSON,
Judge, U. S. District Court,
Northern District of Texas.

Filed January 12th, 1932.

To the Clerk of said Court:

In the above entitled and numbered cause, the plaintiffs, Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, are appealing from the judgment rendered against them in favor of the City of Cisco, Texas, dismissing the above entitled and numbered cause for want of jurisdiction, and it is agreed by the undersigned attorneys of record for the respective parties plaintiffs and defendant, that the issuance of praecipe by the appealing parties is waived, and that the record for the Circuit Court of Appeals in this case shall be constituted and made up of the following instruments, to-wit:

1. Style and caption.

2. Plaintiffs' Second Amended Original Petition.

3. Defendant's amended answer.

4. Insertion in the record of a copy of one of the bonds of each series sued upon by plaintiffs, together with a statement as shown by the record of the total amount of bonds and coupons sued upon by appellants.

4. (a.) Every plea of intervention filed by the respective interveners.

5. All other evidence offered by the plaintiffs.

6. All other evidence offered by the defendant.

7. Judgment of the Court.

8. Notice of Appeal.

9. Waiver of service of notice of appeal.

10. Assignments of error.

103 11. Appeal Bond and approval thereof.

12. Stipulation for preparation of record.

13. Clerk's Certificate.

CALDWELL & RAYMOND,
McBRIDE, O'DONNELL &
HAMILTON,
By DEXTER HAMILTON,
Attorneys of record for Charles P. Bullard, John R. Brandon, Henry E. Poor and Robert D. White, Plaintiffs.

BUTTS & WRIGHT,
By F. D. WRIGHT,
Attorneys of record for City of Cisco, Texas.

Filed January 4th, 1932.

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104 OPINION.

(Title Omitted.)

On the face of the pleadings I overruled the defendant's plea to the jurisdiction of the Court to entertain this suit, based as it was on the ground that the plaintiffs were not the owners but merely the holders of the bonds and coupons, for collection,—that they were not the owners of them,—for the reason there appears in plaintiff's petition this allegation: "Plaintiffs are the owners of and hold title to various and sundry of said bonds and interest-coupons there-

on including the following," then follows a list of the bonds and coupons actually sued upon.

Now, after the record has been made in the case, the defendants again raise the question of jurisdiction. The Court I think is in a better situation now, in the light of the record, to determine the question as to whether that allegation of ownership by plaintiffs of these bonds and coupons has been sustained.

Of course, under all of the authorities, it would not make any difference for what purpose the transfers were made, even though it was to give jurisdiction to the Federal Court in this matter and to confer the right upon the plaintiffs to sue in the Federal Court in behalf of all of these bondholders, if the result of such transfer was that they became actually the owners of the bonds and coupons; that is the effect of the Supreme Court decisions as well as the ruling of the Fifth Circuit in the case of Rojas-Adam Corporation versus Young, 13 Federal, (2nd) 989, in the decision by Judge Foster, where he said: "It is also
105 well settled that persons may transfer property to another for the purpose of giving jurisdiction to the Federal Court providing the change in ownership is bonafide. In such cases the Court will not inquire as to the motive of the transferring party." To the same effect is the Black & White Taxicab Co. versus the Yellowcab Co., which has been cited here by the defendant.

There is no question if plaintiffs were present here, as owners of the bonds and coupons now offered in evidence, under the state of the record in this case, it would not make any difference what the purpose might have been, being the owners of them they could avail themselves of this Court and sue and enforce collection upon them.

To determine the question of ownership, the Court would necessarily have to determine the effect of this

agreement, called the Bondholders Protective Agreement, dated January 3, 1930, which defined the powers of these plaintiffs who are styled in that agreement as the "Bondholders Protective Committee", and the Court, in deciding the effect of that very voluminous "agreement", as it is called, would have to determine that effect from looking at the contract,—to use a common phrase, from its four corners,—and looking at it in that light. I think it is evident here that the ownership of these bonds and coupons doesn't appear to have changed by reason of such agreement; that the real parties in interest here are not the plaintiffs, the Bondholders' Protective Committee, but the various owners of these bonds. Who they are the record does not disclose unless possibly by an affidavit of the plaintiff Bullard as to three of such owners. This simply appears to be a case where four men who were not the owners of any of these bonds, sensed the situation, evidently learned of the failure of the City of Cisco to make payments of coupons due in 1929, and,

105 being enterprising, and desiring the job of handling all of these bonds and coupons, and having the ultimate purpose of collecting them, set themselves up and styled themselves as a Bondholders' Protective Committee, prepared this instrument,—not making the contract with anyone at the time but nevertheless preparing it themselves,—which was to become a contract as between them and any of these bondholders in the event such bondholders should turn over their bonds and coupons to them, providing for a depositary of the bonds, and going at great length into a description of the powers and authority of the Committee.

The First paragraph of the agreement is:

"An Agreement, made and executed as of the Third day of January, A. D. 1930, between John R. Brandon,

Charles P. Bullard, Robert D. White, and Henry E. Poor, and such other persons, if any, as may hereafter be joined with them as members of the Committee (hereinafter sometimes called the "Committee"), parties of the first part, and such holders of bonds of the city of Cisco, Texas, and/or coupons for interest thereon as may become parties to this agreement in the manner herein provided, (hereinafter sometimes called "Depositors"), parties of the second part, and

Whereas said City of Cisco has failed to pay certain interest and principal payments due during the year 1929 on its Bonds; and

Whereas it is desirable that the holders of the Bonds and Coupons should unite and organize for the protection of their interests etc."

Now, the Court is not required to give literal effect to all of the words used in this contract if, on the whole, it clearly appears that it was not the intention of the parties that they were to have such effect. The seventh paragraph, and part of eight, may be treated as an example I suppose of the limit of authority you might say under the literal words that was given to the Bondholders' Committee. The seventh reads: "Every depositor, for himself and not for any other, hereby sells, assigns, transfers and delivers to the Committee, its successors and assigns, each and every bond and coupon deposited hereunder by him, and also all his right, title, interest, property and claim at law or in equity by virtue of said Bonds and Coupons
107 or any instrument securing the same, in and to the property and assets of the City, whether or not mortgaged to secure said Bonds and Coupons or otherwise, and any and all his claims against the City or any receiver or receivers thereof, or under any receivership of the City, or of any of its property, to

the end that the Committee, as from time to time constituted, shall be vested with the full legal title to all the Bonds and Coupons deposited hereunder, and to each and every claim based thereon. Each Depositor hereby covenants and agrees that he will at any time on the request of the Committee promptly execute and deliver any assignments, powers of attorney, or other instruments which the Committee may deem necessary or proper, effectually to vest full and complete ownership in the Committee of said deposited Bonds and Coupons as aforesaid.

Eighth: "The Committee may, as the owner and holder of the deposited bonds and coupons, demand, collect and receive all money due or payable thereon and may take or cause to be taken, or participate in, or settle, compromise or discontinue any actions or proceedings for the collection of any of the bonds or coupons or the protection, enforcement or foreclosure of any legal or equitable lien securing or pertaining to same, including liens arising from the enforcement of taxes, levies and assessments dedicated, levied or available for the service of the bonds, or for the appointment of a receiver of the city for any purpose whatsoever."

Of course it appears from the reading of those words that the nature of the ownership and title in the plaintiffs to all of those bonds and coupons could not, by the use of the English language, be made more absolute, but, after all, the conclusion cannot be escaped that these four gentlemen were not made practically three million dollars richer by this instrument; that each one of them, by virtue of this instrument, did not thereby become the owner of the property on its face, aggregating in value to each of these men approximately five hundred thousand or more dollars, but that the real ownership of all these bonds remained with the transferrers.

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This instrument which in the first place recites no consideration whatsoever except "service", can ultimately mean only the collection of these bonds. No cash consideration is recited. It goes on and recites that if after these bonds are deposited that any final plan reached by the committee on being submitted to the bondholders if not approved by as many as two-thirds of them, then the plan will not be carried out; that in the event it is approved by two-thirds, then the one-third who do not approve will have their bonds returned to them; also that it is to run for a period of five years and if nothing is accomplished or whatever is accomplished that at the end of five years' the remaining bonds are to be retransferred to the transferers, unless a new plan is formed. It also provides for the payment of fees, the purpose of this committee of course being to earn the fees, in the event of the collection of the bonds—the specific fees not being designated any further than that they were to be reasonable fees and the reasonableness of same to be determined by the Committee,—and, after the payment of such fees and expenses, as were necessary, the matter of necessity to be determined by the Committee, then any remaining amounts were to be paid over to these transferrors. It is like instruments that we not infrequently come in contact with, they may be, in their words, ever so absolute, yet, as between
109 the parties the instrument may be an entirely different thing from what it is described to be, in words, depending upon the true purposes of the instrument itself. That is applicable to the situation here. It was not the intention of the parties that these people, the Committee, should actually own. The most that could be said as to the effect of it would be that they held an equitable title or rather that they hold this property in trust.

The real effect of this instrument with respect to ownership, though the paragraph in which it is ex-

pressed comes early in the contract and there are others coming later that contradict it, nevertheless I think it expresses the real truth about this business is found in the sixth paragraph; if I understand it, providing that even after these bonds are delivered, in the event a holder of such bonds who had already deposited them with the Committee should make up his mind for any reason to transfer his bonds to some other person, to trade them, to sell them, the contract provides that each of the bondholders (referred to as a Depositor in the contract) when he makes deposit of his bonds, should receive a certificate. This sixth paragraph deals with his right to transfer that certificate and the right of the transferee of such certificate of deposit to have re-issued to him from the Depositary a certificate which will be evidence, as I view it, of his absolute ownership of the bond. It says "Each depositor of bonds and/or coupons shall receive under and subject to the terms and conditions of this agreement a certificate of deposit signed by the Depositary or agency receiving the same in such form as shall be prescribed by the Committee and transferable only upon the books of the Depositary issuing such certificate. The transferee of any such certificate of deposit duly indorsed by the Depositor and properly witnessed shall, upon surrender of the same to the Depositary issuing such certificate, receive a new certificate of deposit for the same amount of bonds and/or coupons in the name of such transferee or his nominee, who shall thereafter be deemed a Depositor and shall thereafter be entitled to the same rights and privileges and subject in every way to this agreement as fully as the original Depositor. The registered holder for the time being of any certificate of deposit shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to and neither the Depositary nor the Committee, shall be affected by any notice to the contrary."

Now, as I said, that paragraph or that part of the sixth paragraph which I have read, within itself, taken as a whole, is a wonderfully strong circumstance that points more unerringly than all the balance of this strong language about transfers to the Committee and ownership by the Committee as to what the real truth was, who were the real owners and the real parties in interest, even leaving off the declaration that any such transferees of such certificates of deposit, after going through all the requisites here specified, should be for all purposes regarded as the absolute owners thereof. So, as far as ownership is concerned, as heretofore said, it appears on the face of the contract, considering it as a whole, and self-evident to my mind that there is no ownership in this Committee. In other words, if taxes were to be paid on these bonds, though they might be paid by this Committee as an agent, the money of course would be out of these real owners or if they should be destroyed by fire or stolen they would not be a loss to this Committee; the loss would be that of the real owners. My conclusion is that this Committee, after all, did not have itself designated as anything in truth more than a collection agency; that is what it was.

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A great many things have been pointed out under this agreement which this Committee could do and doubtless there were a great many things it had a right to do, but as far as this record is concerned, we see them trying to do but one thing and that is to collect these bonds. There is no record here of their ever having done anything else. I cannot conceive of a purpose that any owner of a note or a bond could have, especially of a city's securities, where it failed to meet its obligations, in placing that bond in the hands of attorneys or agents, other than the collection of them. The fact that the agency or attorney might be allowed some latitude as to the means by which

he could effect that ultimate end would not alter the character of the instrument nor could it change the purpose of the instrument, and, I think, on the whole, it may be said from this that the sole purpose of the Depositors was to constitute this Committee a collection agency; whether they did this by compromise or by trading them off for property or by suit cannot make any difference. The means contemplated to accomplish an end cannot be said to be the purpose of an instrument but the real purpose is the ultimate thing it had in view and in that light I would say this Committee is nothing more, when you strip the agreement of meaningless verbage and come down to its essence, than that of a Collection Committee,—a self-constituted Collection Committee or Agency.

And now we have the other question presented in this allegation of the petition, which was that plaintiffs "hold title to various and sundry of said bonds and the interest-coupons thereof". As I said, the effect of the instrument might be that they held in trust the title. That is the most that could be said about it. Relegated to that position, being holders for collection, I think there is not much dispute between the attorneys as to what the law is in this case.

112 Each has presented his views with respect to the law. The opposite side says, "Yes, that's the law but these decisions are not all applicable to this case." I think in a situation such as I hold the facts to be here the law is well settled. Though it is an old case, Farmington vs. Pillsbury, in the 114th U. S., by Chief Justice Waite, settles this question. As far as I know no later decision has departed from the rule there laid down, it disposing of the very question which we have here:

"Upon the question of transfer it was uniformly held that, if the transaction was real and actually con-

veyed to the assignee or grantee all the title and interest of the assignor or grantor in the thing assigned or granted, it was a matter of no importance that the assignee or grantee could sue in the Courts of the United States when his assignor or grantor could not. A suit by such an assignee or grantee would present, in reality, a controversy between the plaintiff on the record and the defendants. But it is equally well settled that if the transfer was fictitious, the assignor or grantor continuing to be the real party in interest, and the plaintiff on record but a nominal or colorable party, his name being used only for the purpose of jurisdiction, the suit would be essentially a controversy between the assignor or grantor and the defendant, notwithstanding the formal assignment or conveyance, and that the jurisdiction of the Court would be determined by their citizenship rather than that of the nominal plaintiff."

As I view the facts, that is the exact situation we have in this case. And, further, in the same opinion, the Court said:

"We are clearly of the opinion that this case falls within the prohibitions of the statute. The bonds to which the coupons now in suit were attached were all bought as early as 1871 or 1872 by citizens of the State of Maine, who held and owned the bonds themselves when this suit was brought. Their purchases were made while a suit was pending in the Courts of the State to test the validity of the bonds. On the 27th of August, 1878, the highest Court of the State decided in effect that the bonds were inoperative and void, for want of power in the village corporation to issue them. Almost two years after this decision these coupons, to the amount of $7,922.00, were collected from various holders of bonds, all residents of the village of Farmington and citizens of Maine, and

113 transferred, separate from the bonds, to the present plaintiff, a citizen of Massachusetts, under an arrangement by which the plaintiff gave to the agent of the holders of the coupons his non-negotiable promissory note for $500.00, payable in two years from date, with interest and agreed, "as a further consideration for said coupons," that if he succeeded in collecting the full amount thereof he would pay the agent, as soon as the money was got from the corporation, fifty percent of the net amount collected above the $500.00. This suit, begun July 1, 1880, in the name of the plaintiff, is the result of that arrangement. It is a suit for the benefit of the owners of the bonds. They are to receive from plaintiff one-half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose."

It makes no difference that some features of the cases are different; the amount involved in the case I am reading from was $500.00, which was held by the Court to be no real consideration. In this case the amount is indefinite. Those things make no difference, as I view it the two cases are the same. Then the opinion continues:

"The suit is their own in reality, though they have agreed that the plaintiff may retain one-half of what he collects for the use of his name and his trouble in collecting. It is true the transaction is called a 'purchase' in the papers that were executed, and that the plaintiff gave his note for $500.00 but the time for the payment was put off for two years, when it was, no doubt, supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay."

The fact that in that case the paper was not negotiable and in this case negotiable makes no difference. The non-negotiability of the paper was referred to as a circumstance. There "no money was paid" and this is cited also as a circumstance bearing on the intention of the parties. Continuing:

"No money was paid, and as the note was not negotiable, it is clear that the parties intended to keep the control of the whole matter in their own hands so that if the plaintiff filed to recover the money he could be released from his promise to pay. In the language of Mr. Justice Field, speaking for the Court in Detroit v. Dean, 106 U. S. 537, 541, applied to the facts of this case, the transfer of the coupons was 'a mere contrivance, a pretense, the result of a collusive
114 arrangement to create' in favor of this plaintiff 'a fictitious ground of federal jurisdiction,' so as to get a re-examination in that jurisdiction of the question decided adversely to the owners of the coupons by the highest judicial tribunal of the State."

It makes no difference about the details of fact, the extreme facts that produce such agreement in one case and not such extreme facts as are here shown produced it in another; it is the same in effect. That instrument and this one here in this case are to the same effect. I would not say the specific purpose was to create federal jurisdiction. There is no record here, if I am correct in this conclusion, showing affirmatively any jurisdiction in this Court. That was probably in mind. The record discloses nothing this committee did except to sue in a federal Court to enforce collection.

I assume that the majority of those who own these bonds and who are the real parties in interest in this suit are unknown; we do not know their names. There may be hundreds of them for all we know.

The only ones we do know are known by means of an affida-..... which, by agreement between counsel as I understand it, has become evidence in this record. This affidavit is made by one of these plaintiffs, Charles P. Bullard, who states: "There were heretofore transferred to these plaintiffs, among the bonds and coupons sued upon, bonds exceeding three thousand dollars as follows:" Then he names the four bondholders whose holdings each exceed three thousand.

Now it appears that these transferrors, because of residence, could have maintained the suit. Even if the Court should hold that under this kind of an arrangement the persons named in the affidavit could maintain the suit, it is evident that all the balance of these claims must be dismissed. Under the state of the record, if they are to be dismissed all must be dismissed because the claims of these parties are not separated, not segregated in the evidence in any way; they cannot be identified. In view of the whole situation, it is my conclusion that this case in its entirety should be dismissed.

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Now, gentlemen, counsel have worked on this matter for months and the Court has only gone into it at this time hurriedly. I may be mistaken about it. I am certain if I am that I should like to be enlightened, but your briefs have been very brief. If you care to submit exhaustive briefs on it, I would be very glad to have them but that is the view I take of the matter at this time. Of course that ruling includes the Interveners also.

JAMES C. WILSON, Judge.

116 I, GEORGE W. PARKER, Clerk of the District Court of the United States for the Northern District of Texas, hereby certify that the above and foregoing is a true and complete copy of the original papers on file and of record in cause No. 1008 At Law, entitled Charles P. Bullard, et al., versus City of Cisco, Texas, et al., as per praecipe filed by counsel in this cause, except that the original Waiver of Service of Notice of Appeal is included herein instead of copy thereof, also original order of Court concerning exhibits.

Witness the seal of said District Court, and the name of the Clerk thereof, at Abilene, this the 3rd day of February, A. D. 1932.

GEORGE W. PARKER,
(Seal) Clerk,
By IDA M. JAMES, Deputy.

Original Waiver of Notice of Appeal omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * * *

Minute entry of submission, November 15, 1932, omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6511

CHARLES P. BULLARD et al., Appellants,

versus

CITY OF CISCO, TEXAS, Appellee

Appeal from the District Court of the United States for the Northern District of Texas

(December 21, 1932)

Before Bryan, Sibley and Walker, Circuit Judges

OPINION OF THE COURT—Filed December 21, 1932

WALKER, Circuit Judge:

This was an action by the appellants, four individuals, three of whom are citizens of New York, and one a citizen of Ohio, against the appellee, a Texas municipal corporation, to recover the amounts of past due bonds made by appellee, and of past due interest coupons from such bonds, both the bonds and the coupons being payable to bearer, with interest on amounts of such bonds and coupons. Appellants' petition alleged that they held title to bonds of the appellee of described issues in an amount aggregating $2,115,000.00, of which $14,000.00 is past due, and title to past due interest coupons on said bonds in an amount aggregating $335,787.50. Appellee's answer to the petition contained allegations to the following effect: The appellants are not the owners of the bonds or coupons sued upon, or any of them. They paid no valuable consideration therefor, but such bonds and coupons were delivered to, and are held by, appellants merely and solely for the purpose of collection, under the terms of a written agreement providing for a Bondholders' Committee, a copy of which agreement was made an exhibit to the answer. Numerous beneficial

owners of bonds and coupons sued on do not own a sufficient amount thereof to give the court jurisdiction of their claims. By written stipulation of the parties a jury was waived. Evidence taken in the trial showed the following: The appellants constituted the Bondholders' Committee provided for by the written agreement above referred to. All the bonds and coupons sued on and introduced in evidence were delivered to appellants by the respective holders thereof, and were held by the appellants under the terms of the above-mentioned agreement. That agreement provided for holders of such bonds and coupons becoming parties to such agreement by depositing bonds and coupons with a designated depositary; for every depositor by his deposit selling, assigning, transferring and delivering to the committee all his right, title, interest, property and claim, at law or in equity, by virtue of such bonds and coupons, to the end that the committee be vested with full legal title to all bonds and coupons deposited; for the committee having the power as owner and holder of deposited bonds and coupons to collect and receive all monies due and payable thereunder; to settle, compromise, or discontinue any action or proceeding for the collection of any of the bonds or coupons; to purchase, acquire, contract in regard to, deal in or sell or dispose of any property real or personal, which may be or become affected by liens, foreclosures or taxes; to pledge all or any part of such bonds as collateral security for the payment of such monies borrowed by the committee as it shall deem necessary or desirable; to charge the bonds and coupons for the compensation and expenses of the committee, its agents and depositaries; for any member of the committee becoming pecuniarily interested in any property or matters which are, or may become, subject to the agreement, or in any plan or agreement of refinancing or readjustment which the committee may approve; and for the committee having at any time the right to terminate the agreement. That agreement also provided for each depositor of bonds and/or coupons receiving a certificate of deposit signed by the depositary or agency receiving the same in such form as may be provided by the committee, and transferable only upon the books of the depositary issuing such certificate; that "the registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or

coupons therein referred to''; that after a plan adopted by the committee for refinancing, readjusting, liquidation or settlement of all or any part of the bonds shall have become operative, the committee shall return to each holder of a certificate of deposit dissenting from the plan the bonds and coupons represented by his certificate of deposit upon the surrender of the certificate and payment by him of an amount to be fixed by the committee; for such depositor, in the event of a termination of the agreement, being entitled to the delivery of bonds and coupons to the amount represented by the certificate of deposit upon surrendering the certificate properly indorsed to the depositary and paying the depositor's share of the indebtedness, obligations, liabilities and expenses of the committee; and that the agreement shall not remain in force beyond the period of five years unless extended by the committee with the consent of the holders of certificates of deposit representing a majority in amount of the deposited bonds and coupons.

An affidavit of one of the appellants, which was received in evidence, contained statements to the effect that appellants hold no bonds transferred by a citizen of Texas, and that two individuals, one a citizen of Maine, the other a citizen of Massachusetts, and an Ohio corporation, each transferred and delivered to the appellants bonds upon which were past due coupons exceeding in amount $3,000.00. A deposition of the same appellant, which was introduced in evidence by appellee, showed that in answer to an interrogatory calling for the names of the several persons, firms and corporations from whom appellants acquired bonds, and the amounts of bonds so acquired, stated: ''I have no knowledge of these facts.'' The court rendered judgment dismissing the suit for lack of jurisdiction, but without prejudice.

A statute provides that ''if in any suit commenced in a district court * * * it shall appear to the satisfaction of said district court, at any time after such suit has been brought, * * * that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable'' by the district court, that court ''shall proceed no further therein, but shall dismiss the

suit, * * * and shall make such order as to costs as shall be just." 28 U. S. C. A. § 80. It appears from the terms of the agreement under which the appellants acquired and held the bonds and coupons sued on that appellants were not the beneficial owners of those bonds and coupons, but held them for collection only. While language contained in the instrument evidencing that agreement, when considered alone, and without regard to other provisions contained therein, indicates that appellants acquired the legal and equitable title to the transferred bonds and coupons, other provisions of the instrument show that the appellants held the transferred bonds and coupons for the purpose of enforcing claims based thereon, or of compromising, adjusting or settling such claims, and that the transferors of such bonds and coupons remained the beneficial owners of whatever might be realized from such claims, less the part thereof used in paying the compensation of appellants and the amounts of the proper expenses of the appellants, their agents and depositaries. The fact that that instrument contains sundry provision for the appellants having powers which, without such provisions, would have been possessed by absolute beneficial owners of such bonds and coupons is indicative of the absence of an intention to give to the transfer of bonds and coupons to the appellants the effect of terminating the transferors' beneficial ownership of or interest therein. The correctness of a conclusion that a deposit of bonds or coupons under the agreement had the effect of putting an end to the depositor's beneficial ownership thereof is distinctly negatived by the provision that "the registered holder for the time being of any certificate shall be deemed for all purposes to be the absolute owner thereof and the bonds and/or coupons therein referred to."

The evidence showed that all the bonds and coupons were acquired by the appellants from the owners thereof under the above mentioned agreement. There was no evidence as to the amount of bonds or coupons owned by any of the depositors except that to the effect that each of three named depositors transferred and delivered to the appellants bonds upon which were past due coupons exceeding in amount $3,000.00. No evidence showed that any other depositor owned past due bonds or coupons exceeding in amount $3,000.00. The answer of the appellee having raised an issue as to any of the beneficial owners of bonds

and coupons sued on owning or holding an amount thereof sufficient to give the court jurisdiction, and there being no evidence tending to prove that any of such owners, except the three above referred to, owned past due bonds or coupons sufficient in amount to give the court jurisdiction of a suit thereon, the record fails to show that the past due bonds or coupons owned by any transferor, except the three above mentioned, were sufficient in amount to enable the real owner to sue thereon. In so far as the suit was for the enforcement of claims upon which the real owners could not have sued because of the insufficiency of the amount of their claim or claims, it did not really and substantially involve a dispute or controversy properly within the court's jurisdiction, and, so far as regards those claims—the inclusion of which in the suit evidences a purpose to get the court to take cognizance of a dispute or controversy not properly within its jurisdiction—the suit should have been dismissed. Bernards Township v. Stebbins, 109 U. S. 341; Lake County Commissioners v. Dudley, 173 U. S. 243; Waite v. Santa Cruz, 184 U. S. 302; Woodside v. Beckham, 216 U. S. 117; Hartford Fire Ins. Co. v. Erie R. Co., 172 Fed. 899. The decision in the case of Bernards Township v. Stebbins, supra, supports the conclusion that where, as in the instant case, the record shows that some of the sued on bonds or coupons payable to bearer could have been sued on by the real owners, but does not show that other such bonds or coupons sued on could have been sued on by their real owners, the above cited statute does not prevent the maintenance of the suit in so far as it is for the enforcement of claims suits on which by the real owners would have been within the court's jurisdiction. As to the last mentioned claims, based on instruments made by a corporation and payable to bearer, the suit was not kept from being one within the court's jurisdiction by the fact that appellants were vested with the legal title to those instruments simply for the purpose of collection. 28 U. S. C. A. § 41 (1); Waite v. Santa Cruz, supra, p. 325. The decision in the case of Lake County Commissioners v. Dudley, supra, is not opposed to the conclusion that, as to the last mentioned claims, the instant suit was within the court's jurisdiction, and should not have been dismissed for lack of jurisdiction. Language used in the opinion in the cited case is to be read in the light of the facts that it was

a suit on a Colorado corporation's interest coupons transferred or assigned to the plaintiff, and that it does not appear from the report of the case that the plaintiff therein procured from any one assignor who was a citizen of a State other than Colorado coupons in the amount required to give the court jurisdiction.

In the argument in behalf of the appellee it was suggested that the dismissal of the suit is sustainable by reason of the absence of evidence identifying and segregating from the approximately $350,000.00 bonds and coupons and on the past due coupons owned by the three transferors above mentioned. The judgment shows that the cause was "dismissed for lack of jurisdiction, and without prejudice." In the opinion rendered by the court reference was made to the evidence showing that each of several transferors owned bonds upon which were past due coupons exceeding in amount $3,000.00. In that connection the following was stated in the opinion: "Now it appears that these transferors, because of residence, could have maintained the suit. Even if the Court should hold that under this kind of an arrangement the persons named in the affidavit could maintain the suit, it is evident that all the balance of these claims must be dismissed. Under the state of the record, if they are to be dismissed all must be dismissed because the claims of these parties are not separated, not segregated in the evidence in any way; they cannot be identified. In view of the whole situation, it is my conclusion that this case in its entirety should be dismissed." We do not think that the statement that the claims referred to cannot be identified is warranted by the record. The agreement in pursuance of which the Bondholders' Committee was formed provided for each depositor of bonds and/or coupons receiving a certificate of deposit signed by the depositary or agency receiving the same, provisions on the subject indicating that such certificates, and registry records or book entries in reference thereto, contained descriptions of the bonds deposited. In the absence of evidence to the contrary, it seems reasonable to infer or suppose that the certificates issued upon the deposit of the bonds owned by the three mentioned depositors, as well as records or book entries in regard thereto, indicated the bonds deposited, that a production of those certificates, or records or book entries in regard thereto, could have been procured, and that by means thereof the

past due coupons owned by those depositors could have been identified. It seems that, before dismissing the suit in so far as it asserted claims based on those coupons, the court's discretion would have been properly exercised by affording a further opportunity to make clear proof of claims asserted by the suit and already shown to be within the court's jurisdiction. The court's failure in the circumstances disclosed to afford such further opportunity reasonably may be attributed to the mistaken conclusion that it would be futile to do so. The record showing that claims sued on were within the court's jurisdiction, and not showing that the identity of those claims could not be proved, we conclude that the court erred in dismissing the suit for lack of jurisdiction. Because of that error, the judgment is reversed, and the cause is remanded, with direction that a new trial be granted.

Reversed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6511

CHARLES P. BULLARD et al.

versus

CITY OF CISCO, TEXAS

JUDGMENT—December 21, 1932

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was submitted to the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said district Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction that a new trial be granted;

It is further ordered and adjudged that the appellee, City of Cisco, Texas, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 17, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,471. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 774. Charles P. Bullard et al., petitioners, vs. City of Cisco, Texas. Petition for a writ of certiorari and exhibit thereto. Filed March 14, 1933. File No. 37,471.

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IN THE

Supreme Court of the United States

October Term, 1932

No......

CHARLES P. BULLARD et al.,

Petitioners,

vs.

CITY OF CISCO, TEXAS,

Defendant.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit and Brief in Support Thereof

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To the Supreme Court of the United States:

NATURE AND RESULT OF THE SUIT

Petitioners, Charles P. Bullard, John R. Brandon, Henry E. Poor, and Robert D. White, alleging themselves to be citizens of New York and Ohio, respectively,

sued the City of Cisco, a municipal corporation organized and incorporated under the general laws of the State of Texas, and having its situs within the Abilene Division of the District Court for the Northern District of Texas. The case was tried before Honorable James C. Wilson, who entered judgment dismissing the Petitioners' suit on the ground that the Petitioners had conclusively made the suit in violation of Section 37 of the Judicial Code.

From this judgment the Petitioners appealed to the Circuit Court of Appeals for the Fifth Circuit. That court on the 21st day of December, 1932, entered a final judgment reversing the judgment of the trial court; but nevertheless holding that jurisdiction as to only a part of the cause of action existed in the Federal Court. The above named Petitioners pray for a Writ of Certiorari and review of the order and decree of the United States Circuit Court of Appeals for the Fifth Circuit entered as aforesaid, a certified copy of the record and proceedings whereof we are filing and presenting herewith.

SUMMARY AND SHORT STATEMENT OF THE MATTER

The City of Cisco, Texas, at different times issued various series of bonds and created a special sinking and interest fund for their payment, for which a specific

tax levy was made. The total outstanding bonded indebtedness at the time of the trial of the case approximated Four Million Dollars. Long prior thereto the City of Cisco had defaulted in payments of both principal and interest. Various bondholders residing in different states of the Union other than Texas had transferred bonds held by them to the Petitioners herein, the aggregate amount of such transfers being approximately Two Million Dollars. These transfers were made under a written contract between the Bondholders and the Petitioners herein, which is set out at pages 21 to 37 of the Record.

The Petitioners in their petition in the trial court properly described the bonds, alleging themselves to be the owners of them under transfers from various holders, all of which are alleged to reside in States other than Texas. The bonds were all payable to bearer. Proper allegations of diversity of citizenship were made, as appears from the Petitioners' petition in the trial court. The defendant, among other pleadings, embraced in its answer a denial of jurisdiction on the ground that Petitioners were not the owners of the bonds and coupons sued upon, but that the bonds and coupons were delivered to them solely for the purpose of collection without the deposit in them of any beneficial interest. The only proof in the record as to the amount of past due coupons and bonds transferred to the Petitioners

by bondholders was that three of the transferors of bonds and coupons transferred bonds upon which in each instance there were past due coupons aggregating more than the jurisdictional amount.

There being no proof as to the amount of bonds and coupons transferred to the petitioners herein by the bondholders except as to the three above mentioned, the Circuit Court of Appeals held that the judgment of dismissal was erroneous as to these three transfers of bonds to the petitioners, but that the suit was properly dismissed as to all the other bonds and coupons sued upon by Petitioners, and as to which there was no proof one way or the other as to specific amounts transferred by the respective transferors to the petitioners.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. Section 37 of the Judicial Code, upon which the Circuit Court of Appeals relied to sustain the order of dismissal as to all of the bonds held by petitioners (except as to those bonds in the three instances where it affirmatively appears in the record that the transferors each had past due coupons aggregating more than $3,000), as construed by this Honorable Court, Barry v. Edmunds, 116 U. S. 550, 20 L. Ed. 729, does not authorize dismissal for want of jurisdiction unless it affirmatively

appears from the record that the transfers were made solely and exclusively for the purpose of creating a case cognizable in a national court, and before it can be held that the transaction is colorable or collusive so that a dismissal for want of jurisdiction will be sustained, the facts on the record must create a legal certainty of that conclusion. A mere surmise without judicial ascertainment that the transfers were made for the sole purpose of creating jurisdiction is not sufficient to support a judgment of dismissal, and the Circuit Court of Appeals in its decision in this case did violence to the terms and provisions of Section 37 of the Judicial Code, as construed by this court, in holding without evidence that the respective transfers to the petitioners constituted the collusive making of a suit in the Federal Court.

2. The decision of the Circuit Court of Appeals in holding that the cause should be dismissed as to all the suit except the amounts embraced in the three particular transfers above mentioned, is in direct and palpable conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit, in the case of Hill v. Walker, 167 Fed. 241, for the reason that in the latter case it was held that jurisdictional averments accomplish their purpose immediately upon the filing of the complaint giving plenary jurisdiction of the court, which is not suspended by denial in the answer, or defeated by such denial combined with an inaccuracy or insufficiency of

proof on the subject, but continues unimpaired until evidence is produced clearly showing that jurisdiction does not in fact exist, whereas in this case the Circuit Court of Appeals has held that it is proper to dismiss for want of jurisdiction upon a mere surmise or suspicion, without the introduction of any competent proof to support the plea of non-jurisdiction.

3. The decision herein by the Circuit Court of Appeals for the Fifth Circuit to the effect that the absence of proof that each transferor of bonds had an indebtedness due at the time of the transfer equal to the jurisdictional amount authorized judgment of dismissal, is in conflict with the former decision of that court in the case of Rojas-Adams v. Young, 13 Fed. (2) 289, and is in conflict with that court's former decision in the case of Estero Bay Estates v. Giddens, 14 Fed. (2d) 172, and is also in conflict with the decision of the Circuit Court for the Sixth Circuit, in the case of Village of Kent v. Dana, 100 Fed. 56.

4. The holding, in effect, of the Circuit Court of Appeals for the Fifth Circuit, that there being an absence of proof from the record of the amount of the transfer in each instance to the petitioners, the transfers were colorable and collusive, is in direct conflict with the decision of this Honorable Court in the case of Black & White Taxicab Co. v. Brown & Yellow Taxicab Co., 48 Sup. Ct. 404, 72 L. Ed. 383.

5. The question presented by the record is a question of public character and is of grave interest and concern, and ought to be determined by this court, because under current conditions in this country, municipal bonds are usually and commonly sold to numerous and divers individual citizens residing in various states other than that in which the debtor municipality is domiciled. As a practical matter, bondholders' committees have been and are now organized, because of the necessity of the situation in such circumstances to make adjustments in connection with refunding bondholders' claims against municipalities in financial embarrassment. Such committees as Trustees, being contractually clothed, as in this instance, with title and various specific rights and powers of negotiation in connection therewith as citizens of the United States, have such title as to confer jurisdiction in the federal courts, upon the appearance on the record, as in this case, of title to the bonds in the aggregate exceeding the jurisdictional amount, there being no question of lack of diversity of citizenship.

6. The petitioners sued as owners of the bonds under transfers. The bonds were payable in each instance to bearer. Under the Negotiable Instrument Law of Texas an instrument payable to bearer is negotiated by mere delivery. We quote from that law as follows:

"An instrument is negotiated when it is transferred from one person to another in such manner

as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery * * *". (Sec. 30, Art. 5934, Annotated Texas Statutes.)

The holding of the Circuit Court of Appeals constitutes a setting aside as void and nugatory this section of the statutes of the State of Texas, because the instrument under which the petitioners hold the bonds, all of which are payable to bearer, not only constitutes a conveyance of title, but clothed the petitioners with various rights, duties and obligations, apart from the right of litigation, as Trustees of the bonds and coupons sued upon. The instrument under which the bonds were conveyed to the petitioners, denominated a "Deposit Agreement" appears on pages 21 to 37 of the Record. This agreement is not, as treated by the Circuit Court of Appeals, merely an agreement constituting the petitioners a collecting agency. It is an express trust. It contains all the elements essential to the creation of an express trust, making these petitioners Trustees, with definite duties, powers, rights and responsibilities. There is a conveyance or a transfer to persons capable of holding the property transferred; there is an object or fund transferred, and there is a cestui que trust, and a purpose to which the trust agreed upon is to be applied.

Not only do all the elements of an express trust appear from the terms of the contract reposing title in

the purchasers, but the defendant itself, in its pleadings as well as in its treatment of the case throughout, expressly treats the contract as a trust indenture. The contract embracing all the elements which create an express trusteeship as distinguished from an agency, and the parties having so treated it, the Circuit Court of Appeals could not ignore the proposition of trust relationship urged in the brief before it, and hold the transaction to be a colorable or simulative or collusive one, without doing violence to the decision of this Honorable Court in Taylor v. Mayo, 110 U. S. 330, 28 L. Ed. 163. In its disposition of the case it has brought itself into conflict with the case of Fuller v. Venable, 118 Fed. 553, and Parker v. New England Oil Corporation, 8 Fed. (2) 392.

7. The Circuit Court of Appeals for the Fifth Circuit misapplied Section 37 of the Judicial Code, and misapplied the decisions in Farmington Village v. Pillsbury, 114 U. S. 139; Waite v. Santa Cruz, 184 U. S. 302; Williams v. Nottawa, 104 U. S. 208; Inhabitants of Bernard's Township v. Stebbins, 109 U. S. 301; Lake County v. Dudley, 173 U. S. 243; Webb City v. Beckham, 216 U. S. 117. A correct application of Section 37 of the Judicial Code and of the interpretation of the above mentioned cases requires a modification of the judgment of the Circuit Court of Appeals, to the effect that the

court has jurisdiction of all of the whole amount involved in the suit under the pleadings filed by the petitioners.

In the first place, there is no evidence in the record that the transferors from whom the petitioners received the bonds, each could not have sued in his own name. In the second place, the title to all the property was reposed in the petitioners as Trustees, and as such Trustees, petitioners were clothed with the sole and exclusive authority to maintain the suit under the rule announced by this court in Dodge v. Tulleys, 144 U. S. 451; Kokusi Kisen Kabushiki Kaisha v. Argos Merc. Corp., 280 Fed. 700 (Certiorari denied 258 U. S. 630, 66 L. Ed. 801), and Susquehanna & Wyo. Valley R. R. Co. v. Blatchford, 11 Wall 172, 20 L. Ed. 179.

The ultimate question is solely and simply that of jurisdiction. For the reasons stated, we respectfully submit that a writ of certiorari should be allowed and the question decided by this Honorable Court.

Wherefore, your petitioners pray that a writ of certiorari may issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify the above stated cause to this court for review and determination, as provided by law, and that your petition-

ers may have such other and further relief in the premises as to this Court may appear proper.

Respectfully submitted,

CHARLES P. BULLARD,

JOHN R. BRANDON,

HENRY E. POOR,

ROBERT D. WHITE,

Petitioners.

By Dexter Hamilton

Of Counsel.

CALDWELL & RAYMOND,
New York, N. Y.

McBRIDE, O'DONNELL & HAMILTON,
Dallas, Texas.

By Dexter Hamilton

Counsel

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

I, L. C. McBride, being duly sworn, depose and say: That I am one of the Counsel for the Petitioners in the foregoing petition, and that I have read the petition and know the contents thereof, and that the facts therein stated are true to the best of my knowledge, information and belief.

Lawrence C. McBride

Sworn to and subscribed before me this the ..... day of March, A. D. 1933.

Notarial Seal Roberta Mullens

Notary Public, Dallas County, Texas.

COUNSEL'S CERTIFICATE OF MERIT.

We hereby certify that we have examined and read the foregoing petition for a writ of certiorari; that in our opinion such petition is well founded and should be granted by this Honorable Court, and that said petition is not filed for delay.

Dated this the 6th day of March, 1933.

CALDWELL & RAYMOND
McBRIDE, O'DONNELL & HAMILTON,
Counsel for Petitioners.

Dexter Hamilton
Of Counsel.

IN THE

Supreme Court of the United States

October Term, 1932

No......

CHARLES P. BULLARD et al.,

Petitioners,

vs.

CITY OF CISCO, TEXAS,

Defendant.

Brief in Support of Petition for Writ of Certiorari

To the Supreme Court of the United States:

BRIEF STATEMENT OF THE PLEADINGS

The petitioners in the trial court clearly and explicitly alleged diversity of citizenship and jurisdictional amount in controversy (Record p. 2). The different bond issues made by the defendant, City of Cisco, were alleged and described (Record 2 to 7). It was alleged that at the time of the issuance of the various and sundry bonds, coupons

were executed and issued representing the interest payments and that both the bonds and the coupons were in form and in fact negotiable instruments, payable to bearer (Record 7). It was explicitly alleged that the petitioners were the owners of, and held title to, certain of the bonds and coupons, which were fully described (Record, pp. 8 to 15). It was alleged that bonds the title to which were held by petitioners and past due, amounted to $14,000, and that interest coupons the title to which was held by petitioners and past due, amounted to more than $335,000.00 (Record p. 15).

They prayed for judgment for the amount of past due bonds and past due interest coupons held and owned by them. (Record 15, 16).

The answer embraced an allegation that the defendant believed and alleged that no holder of bonds or interest coupons past due had an amount sufficient to give jurisdiction, and alleged that the petitioners were not in fact the holders and owners of the bonds sued upon, or any of them, but that the bonds and coupons were delivered to them merely and solely for the purpose of collection, without their having any beneficial interest whatever in them (Record 17).

Various interventions were filed by non-residents. The Reserve Loan Life Insurance Company, a corporation incorporated in the State of Indiana, intervened and sued for past due indebtedness on bonds of the same

series sued upon by these petitioners, and sought the recovery of $7,500.

The Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association formed under the laws of the State of Ohio, suing through certained named officers who resided in the State of Ohio, sought recovery of the sum of $17,920.

S. M. Berry, J. M. Phillips and J. E. Rogers, citizens of Iowa, intervened as Trustees for the Mutual Benefit Department of the Order of Railway Conductors of America, and sought recovery of past due and unpaid bonds and coupons aggregating $12,600.

The United Mutual Life Insurance Company, incorporated under the laws of the United States of America, domiciled in the City of Indianapolis, Indiana, intervened and sought recovery of past due and unpaid bonds and coupons aggregating $5,370 (Record 39 to 66).

UNDISPUTED FACTS

There is no dispute in the facts on the record. These petitioners introduced in evidence past due bonds and coupons aggregating $349,787.50 (Record 67 to 72).

The petitioners introduced undisputed evidence to the following effect: (1) That the petitioners were the holders of all the bonds described in the petition; (2) That

the bonds, which are all payable to bearer, as shown by the record, were transferred to petitioners by actual delivery and were on deposit in the Liberty National Bank & Trust Company of New York, in the name of, for, and subject to the control, dominion and disposition of the petitioners; (3) That no bond transferred to petitioners was owned by any citizen of Texas; (4) That among the bonds upon which matured and past due coupons exceeded $3,000, there were transferred to the petitioners, the following:

(a) From George C. Averill, Waterville, Maine, bonds upon which past due coupons aggregated $5,403.75;

(b) From the Title & Guaranty Trust Company, Cincinnati, Ohio, bonds upon which past due coupons aggregated $3,120.00;

(c) From E. Schier Welsh, Boston, Mass., bonds upon which past due coupons aggregated $5,590.00.

That the exclusive control, dominion and ownership of the bonds sued upon were in the petitioners under the terms of a certain agreement dated January 3, 1930, which itself was introduced in evidence (Rec. pp. 73, 74). The above mentioned agreement was attached to the defendant's answer and is set out on pages 21 to 37 of the Record.

This agreement embraces substantially the following:

That the City of Cisco having failed to pay its interest and certain principal payments on bonds, and it being desirable that the holders of bonds and coupons should unite or organize for the protection of their interests, which could be accomplished most effectively and with the least expense by the appointment of a bondholders' committee, with full power and authority in the premises, and the committee having consented to act for the bondholders and coupon holders, the members of the committee and the bondholders agreed:

That bonds and coupons deposited with the committee shall be held and disposed of by the committee or its depository, subject alone to the order of the committee. It was provided that neither the committee nor its members individually, should be liable for the acts or omissions of any agent, attorney or employee of the committee, nor for any act of a member of the committee, except such member's wilful misconduct.

It was provided that every depositor of bonds should receive, in conformity with the terms of the agreement, a certificate of deposit signed by the depositary receiving the same, and that such certificate should be transferable only upon the books of the depositary issuing the certificate; that a transferee of any such certificate of deposit after its issuance, duly endorsed by the deposi-

tary, should upon surrender of such certificate, receive a new one for the amount of the bonds or coupons in the name of such transferee or his nominee, who should thereafter be deemed the depositor, and it was further provided that the registered holder of any such certificate should be deemed for all purposes to be the owner of the certificate and of the bonds and coupons referred to in it, so that neither the depositor nor the committee should be affected by any notice to the contrary. This provision is embraced in the sixth section of the agreement. In this same section it is provided that no depositor should have any right to withdraw any bonds or coupons deposited under the agreement, nor to take any action with respect to deposited bonds or coupons and that no other bonds or coupons deposited should be satisfied or discharged except as may be expressly declared and provided by the committee (Record, pp. 26, 27).

The agreement contained the express provision that every depositor sells, transfers, assigns and delivers to the committee, and its successors, every bond and coupon deposited under the terms of the agreement, and all his right, title, interest, property and claim at law, or in equity, by virtue of said bonds and coupons or any instrument securing them, and in and to the property and assets of the City, whether or not mortgaged to secure the bonds and coupons, or otherwise, and they all contract that the committee shall be vested with full legal title

to all the bonds and coupons deposited under the agreement and to every claim based therein (Record, pp. 27, 28).

The contract embraces an express stipulation that the committee, the petitioners here, may, as the owner and holder of deposited bonds and coupons, demand, collect and receive all moneys due and payable thereon, and take or cause to be taken, or participate in, or settle, any action or proceeding for the collection of the bonds or the protection, enforcement or foreclosure of any lien securing or pertaining to them, including liens arising from the enforcement of taxes, levies, assessments, etc. The agreement clothes the committee with the power to purchase, acquire, contract in regard to, deal in, sell or dispose of any property which may be affected by any lien foreclosure or taxes. The agreement further provides that the committee may exercise all the rights of ownership over any property or securities acquired by it (Record p. 28).

The committee is given the power to borrow from time to time such money as the committee deems necessary or desirable, and to pledge any or all of the bonds and coupons deposited as collateral security for the payment of such loan or loans (Record p. 29).

Not only does the deposit agreement deprive the transferors of bonds of any right to control or dispose of any bonds or coupons (Record 27) but the committee is given

full power to make any plan or agreement for refinancing or readjustment, including provisions for the acceptance of any other obligations, evidence of indebtedness, or property of, or claims against the City of Cisco (Record 31).

The above is substantially an epitomized statement of the uncontradicted record.

We submit the petition for certiorari upon the following points:

POINT I.

The transfers of the bonds to the petitioners by various holders in conformity with the deposit agreement was a real, not a colorable deposit of title, and it appearing that the transfers were not solely and exclusively for creating federal jurisdiction where none previously existed, jurisdiction as to all claims in the suit exists without regard to the values of respective groups of bonds transferred by the different transferors.

POINT II.

There being no proof of amounts transferred except in three instances where the respective amounts of claims exceeded the amount required under Section 24 of the code to give jurisdiction, and diversity of citizenship as to all transferors being conclusively establish-

ed, the record contains no proof to sustain the judgment of the Circuit Court requiring dismissal for lack of jurisdiction.

POINT III.

Jurisdiction both as to parties and amount conclusively appears from the face of plaintiff's petition, and the jurisdictional averments of the complaint not being made as a basis for proof but to found jurisdiction, plenary jurisdiction in this cause in the federal court arose upon the filing of the petition and continued unimpaired unless the evidence adduced in the case clearly shows with certainty that jurisdiction in fact does not exist, and the facts introduced in evidence not tending to establish as a legal certainty that the court was without jurisdiction, the judgment of dismissal was fundamentally wrongful and erroneous as a matter of law.

POINT IV.

A dismissal for want of jurisdiction must as a matter of law be based upon judicial ascertainment of facts from the proof in the record that the court was without jurisdiction, and such facts must be of that probative quality which convinces the mind to a legal certainty. Since the record in this case fails to meet this requirement, the court erroneously held that no jurisdiction existed.

POINT V.

The deposit agreement in legal effect creates an express trust whereby the petitioners become the holders of the legal title to the bonds and coupons, in trust, for the purposes expressed in the trust agreement, and as trustees they were clothed with ownership of title upon which they could rightfully invoke federal jurisdiction upon the ground of diversity of citizenship.

ARGUMENT

Section 37 of the Code bears a uniform construction under the decisions of this court, and under most of those of the lower federal courts, to the effect that before jurisdiction can be denied by reason of the provisions of this section of the Code, the purpose of the transfer must appear to a legal certainty from the record to have been solely and exclusively to give jurisdiction to the national courts where none formerly existed. If this should be one of the purposes disclosed by the record, but other purposes involved in the transfer also appear, then the transaction does not in that event constitute improperly or collusively making a suit for federal court jurisdiction.

The jurisdictional averments of the complaint made in the federal courts when filed bring into action plenary jurisdiction of the court over the suit. A pleading denying

the jurisdiction does not impose upon the plaintiff any burden of proving jurisdiction. Such denial must be sustained in order to defeat jurisdiction by proof adduced on behalf of the defendant, clearly showing that jurisdiction in fact does not exist. The plaintiff's pleading of jurisdictional facts has the following effect: First, it makes a prima facie case in favor of jurisdiction. Second, the jurisdiction thus established continues until the adverse party produces competent evidence to establish with legal certainty that the court is in fact and in truth without legal cognizance of the suit.

Barry v. Edmunds, 116 U. S. 550, 20 L. Ed. 729.

Hill v. Walker, 167 Fed. 241.

We quote from the latter case as follows:

"The jurisdictional averments of the complaint in federal courts are not made as a basis for proof at the trial, but to found jurisdiction of the suit. They are not held in suspense until supported by proof, like allegations respecting the merits, but immediately upon the filing of the complaint, they accomplish their purpose. Thereupon by virtue of such allegations, plenary jurisdiction of the court over the cause arises. That jurisdiction is not suspended by a denial in the answer or defeated by such a denial combined with an inaccuracy or insufficient proof on the subject, but continues unimpaired until evidence is produced showing clearly that jurisdiction in fact does not exist. What, then, is the force

"and effect of a proper pleading of jurisdictional facts? (1) It makes a prima facie case in favor of jurisdiction. (2) Such jurisdiction continues until evidence is produced which convinces the mind to a 'legal certainty' that the court in fact is without lawful cognizance of the suit."

From the same case we quote the following language:

"In Barry v. Edmunds, 116 U. S. 550, 6 Sup. Ct. 501, 20 L. Ed. 729, it was held that a suit cannot properly be dismissed by a Circuit Court of the United States, as not involving a controversy within the jurisdiction of the court, unless the facts when made to appear on the record create a legal certainty of that conclusion. 'Nothing less than this', said Mr. Justice Matthews, 'is meant by the statutes when it provides that the failure of its jurisdiction on this account, shall appear to the satisfaction of said Circuit Court'."

The defendant in this case while raising the question of jurisdiction by its pleadings, made no effort to tender any proof to sustain the allegations of lack of jurisdiction, and the jurisdictional facts clearly appearing from the averments of the pleading, there is no basis, as we view it, for the judgment of the Circuit Court of Appeals holding that the suit should be dismissed as to all those claims transferred to the petitioners which the petitioners failed to establish affirmatively and seriatum to be in an amount within the federal court jurisdiction. No duty rested upon the petitioners to establish the juris-

dictional facts alleged in their petition. To defeat jurisdiction, the burden was upon the defendant to prove to a legal certainty facts and circumstances which, under section 37 of the code would defeat jurisdiction. The defendant having failed to undertake or discharge this burden, a judgment of dismissal based upon the court's mere personal opinion or suspicion, instead of upon judical ascertainment derived from facts, cannot rightfully and legally be sustained.

The clear effect of the opinion by the Circuit Court of Appeals is to put the burden of proving the fact of jurisdictional amount to have been included in each transfer to the petitioners, upon the petitioners themselves instead of upon the defendant in the case. This clearly appears from the following language quoted from the opinion of the Circuit Court of Appeals:

> "The answer of the appellee having raised an issue as to any of the beneficial owners of bonds and coupons sued on owning or holding an amount thereof sufficient to give the court jurisdiction, and there being no evidence tending to prove that any such owners, except the three above referred to, owned past due bonds or coupons sufficient in amount to give the court jurisdiction of a suit thereon, the record fails to show that the past due bonds or coupons owned by any transferor, except the three above mentioned, were sufficient in amount to enable the real owner to sue thereon. In so far as the suit for the enforcement of claims upon

> which the real owners could not have sued because of the insufficiency of the amount of their claim or claims, it did not really and substantially involve a dispute or controversy properly within the court's jurisdiction, and, so far as regards those claims,—the inclusion of which in the suit evidences a purpose to get the court to take cognizance of a dispute or controversy not properly within its jurisdiction,—the suit should have been dismissed.

The action of the court thus revealed not only does violence to the provisions of Section 37 of the Code, but disregards and conflicts with former decisions of this court as indicated in the above petition and those of other Circuit Courts of Appeals.

However much of the courts may consider the purpose and the motive of the petitioners and those from whom the bonds were transferred, as revealed by the written contract set forth in the record, it must conclusively appear, so it seems to us, that various purposes besides mere litigation were involved in the making of the contract. We have enumerated those purposes in setting forth under the preceding statement the terms of the contract. To avoid repetition, we respectfully refer the court to that statement.

We now refer the court to other decisions of the Circuit Court for the Fifth Circuit, which sustain the view we assert to the effect that, other bona fide purposes than that of litigation clearly appearing from the con-

tract, jurisdiction can not be denied on the ground that the transaction was for the purpose of perpetrating a fraud on the jurisdiction of the federal courts.

Rojas-Adams v. Young, 13 Fed. (2d) 989, Circuit Court.

In this case a motion was filed to dismiss for want of diversity of citizenship, on the ground that the plaintiff was a sham corporation organized by citizens of Louisiana (the state in which the defendants lived), the corporation being a Delaware corporation organized for the purpose of perpetrating a fraud on the jurisdiction of the court. The trial court sustained the motion to dismiss the case. On appeal it was held that the jurisdiction was properly laid in the federal court. The appellate court found that the purpose of the agreement, among other things, was to control by lease certain lands with trapping privileges. The defendants in the case before the corporation was effected and at the time it was formed were in possession of the land and refused to vacate it, with the result that the suit was filed. The facts were substantially these: In connection with the organization of the corporation the parties consulted a reputable attorney and he advised them to incorporate under the laws of Delaware for two reasons:

First, because under such incorporation more favorable exchange of stock for land could be made; and

Second, because, the corportion being a foreign one, could bring suit against the defendant or trespassers who were citizens of the State of Louisiana and thereby avoid local prejudice.

From these two sets of facts, Judge Foster said that good faith was easily deduced and that although the incorporators anticipated litigation, they had the right so to arrange their affairs as to have access to the federal courts, it being done legally and in good faith. In that case the various interests of the parties in the land were transferred to the corporation and stock was issued representing their interests. Yet under these circumstances, the corporation being organized for the two reasons above mentioned and not *solely for federal* jurisdiction was maintained.

Estero Bay Estates v. Giddens, 14 Fed (2) 172.

This was a suit brought to remove cloud from title to certain lands in Florida. Dismissal was sought on the ground that one of the purposes in perfecting the corporation was to bring suit in the Federal Court. Section 37 of the Judicial code was invoked and the case was submitted on a stipulation covering the reasons for incorporating. One of the reasons specified was that if litigation should arise involving title to the lands, the corporation being a foreign one, could invoke the jurisdiction of the federal courts instead of the state courts.

Other reasons for incorporation were included as follows:

1. The incorporators did not desire to have their investments in the property connected with their personal business.

2. They desired to sell without the joint consent of their associates and their wives.

3. The stock issue could be used as collateral.

4. Avoidance of inconvenience.

5. Avoidance of personal liability.

The court held that the enumerated reasons being among the purposes of the incorporators, the purpose to put themselves in a position to invoke the jurisdiction of the federal courts was not the sole reason for the incorporation, and accordingly held that even if one of the reasons was to invoke the jurisdiction of the federal courts, the transaction did not come within the terms of Section 37 of the Code.

In the case of Black & White Taxicab Company vs. Brown & Yellow Taxicab Company, 48 Sup. Ct. 404, 72 L. Ed. 383, the facts were substantially these:

The L. & N. Railroad Company made a contract with the Brown & Yellow Taxicab and Transfer Company, giving the latter the exclusive privilege of going upon its trains, into its depots and surrounding premises to

solicit baggage and passengers, and assigned a plot of ground belonging to it to the use of the Taxicab Company, awaiting the arrival of trains. The Black & White Taxicab Company undertook to use the grounds of the Railroad Company to solicit business in like manner as the Brown & Yellow Taxicab Company.

The Plaintiff, the Brown & Yellow Taxicab Company, was originally a Kentucky Corporation. The railroad company and the Black & White Taxicab Company were Kentucky corporations. The Brown & Yellow Taxicab & Transfer Company dissolved its Kentucky corporation and formed, under the same name, with the same assets and with the same incorporators, a Tennessee corporation, and took over as the sole capital stock the properties of the Kentucky corporation. The plaintiff had no property in Tennessee. It transacted no business there. It kept no books there and had no office there. It was expressly agreed and conceded that the plaintiff corporation dissolved its Kentucky corporation and reincorporated in Tennessee for the purpose of bringing suit in the Federal Court and for no other purpose.

On these facts the Supreme Court of the United States held that the case was properly cognizable in the federal court, Judge Butler saying:

> "The motives which induced the creation of respondent to become successor to its Kentucky grantor and take a transfer of its property, have no in-

fluence on the validity of the transactions which are the subject of the suit. The succession and transfer were actual, not feigned or merely colorable. Under these circumstances courts will not inquire into the motives when deciding concerning their jurisdiction.

Also see the following authorities:

Cyc. Fed. Proced. Sec. 93 and 1196.

Ind. Sch. Dist. v. Rew, 111 Fed. 1;

Scott Co. v, Advance-Rumley, 288 Fed. 739.

Thompson v. Searcy, 57 Fed. 1030.

Doane v. Calif. Land Co., 243 Fed. 70.

The contract under which the committee operates, to our minds, construed in connection with the actual delivery of the bonds and coupons, all of which are payable to bearer, constitutes a bona fide transfer of title to the Committee. It is immaterial what the purpose of the transfer was; the question is—have the various owners by the delivery of the bonds under this contract effectively transferred title so as to give the Committee dominion and control over the bonds of that quality which constitutes ownership as a matter of law? If the transfer deposits ownership, in the most expansive meaning of that term, in petitioners, then it seems to us that the transaction does not come within the terms of the statute, and that the petitioners have all the rights as plaintiffs given

by jurisdictional statutes. We here call attention to the various judicial definitions of the word "Owner", and of the words "To Own."

> "The word 'owner' includes any person who has usufruct, control, or occupation of real estate, whether his interest in it is an absolute fee, or in estate for years under lease. A tenant for a term of years is an owner of property, within the general or popular meaning of the word, and he may properly allege himself to be owner in a complaint in an action of ejectment brought against his landlord."
>
> Owner, 6 Words & Phrases, p. 5143-5, citing a Minnesota case.

> "The word 'owner' is not a technical term. It is not confined to a person who has the absolute right in the chattel, but also applies to the person who has possession and control of it."
>
> Owner, 6 Words & Phrases, p. 5148, citing a Massachusetts case.

> "'To own' is defined, 'to hold as property; to have a legal or rightful title to; to have, to possess'. And an 'owner' is 'one who owns; a rightful proprietor'. An 'Owner' is not necessarily one owning the fee simple or one having in the property the highest estate it will admit of. One having a lesser estate may be an owner, and, indeed, there may be different estates in the same property vested in different persons, and each be an owner thereof. United

States v. Ninety-Nine Diamonds, 139 Fed. 961, 971, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185 (quoting Baltimore & O. R. R. Co. vs. Walker, 16 N. E. 475, 45 Ohio St. 577, 585). Jones vs. States, 70 N. E. 952, 954, 70 Ohio St. 36, L. Ann. Cas. 618 (quoting and adopting definition in Baltimore & Ohio R. R. Co. vs. Walker, 16 N. E. 475, 45 Ohio St. 577)."

Owner, Words & Phrases, Second Series, page 485.

"An 'owner' is one who has dominion over that which is the subject of the ownership. He has the right to make use of it, consistently with the rights of others, as he may see fit. The ownership may extend to the entire thing, or may be limited to an interest in it, and whatever is the subject of the ownership is held by the owner for his own individual benefit. Hare v. Young, 26 Idaho 682."

Owner, 5 Words & Phrases, Third Series, p. 783, citing an Idaho case.

"The word 'owner' is not infrequently used to describe one who has dominion or control over a thing, the title to which is in another. Lockhart v. State, 60 So. 591, 6 Ala. App. 61; Robinson v. State, 62 So. 303, 306, 7 Ala. App. 172".

Owner, 5 Words & Phrases, Third Series, p. 783.

The question is, does the acceptance of the provisions of the contract by transferors and the delivery of the bonds to the appellants under it disclose an intention to transfer a title? And this intention must be determined from the facts peculiar to the transaction. These facts

must disclose to a legal certainty that a bona fide intention to pass any title did not exist before a judgment of dismissal can be sustained.

The cases principally relied upon to support the decision of the trial court are the following:

Farmington Village v. Pillsbury, 114 U. S. 138, 21 L. Ed. 134.

Waite v. Santa Crus, 184 U. S. 302, 46 L. Ed. 552.

Williams v. Nottawa, 104 U. S. 208, 26 L. Ed. 719.

Inhabitants of Bernard's Township vs. Stebbins, 109 U. S. 341.

Lake County v. Dudley, 173 U. S. 243.

To our minds an analysis of these respective cases, properly considered, reveals a distinction between them and the instant case under its peculiar facts, assuming for the purposes of argument, and only for those purposes (there being no evidence in the record to support the assumption) that none of the transferors of bonds and coupons transferred to the petitioners in this case such bonds and coupons of the value of $3,000.00. We make this assumption because as a matter of grave practical concern to bondholders and business men we believe a clear and distinct decision on the theory of the court and of the defendant necessary in the interest of the public, as well as in that of these parties.

We will take up the cases in the order named and call to the court's attention as briefly as possible the facts involved in those cases upon which the respective decisions turn.

Farmington Village v. *Pillsbury*, supra: This is the case principally relied upon by the court in rendering a decision adverse to us. We submit that the facts of that case conclusively revealed a fraudulent attempt to acquire jurisdiction in the federal court and that no other purpose was involved in the transaction. The coupons of the bonds of the Village of Farmington involved in the pretended purchase had been declared void by the court of last resort in the State of Maine two years prior to the pretended transfer to the bonds. It rendered an opinion to the effect that the statute authorizing the issuance of bonds was unconstitutional and void. This was in 1878. In 1880, after the coupons had been declared void and of no value whatsoever, Pillsbury acquired from a holder of the bonds named Dyer an amount within the jurisdiction of the Fderal Court under a pretended transfer in connection with which he executed his non-negotiable note for $500.00, payable two years after date. Pillsbury filed suit under these circumstances. The present statute had not been enacted.

Certainly there could be no bona fide transfer of bonds the entire value of which had been destroyed by the above mentioned decision of the Supreme Court of Maine,

and the United States Supreme Court, in the light of the simple facts above mentioned, held that the transfer of the coupons was a mere contrivance, a pretense, the result of a collusive arrangement to create a fictitious ground of federal jurisdiction by the transfer of these coupons from a citizen of Maine to a citizen of Massachusetts, so as to get a re-examination of the question of the validity of the bonds in the federal court.

In the Cisco case the court's ruling in effect was that all of the coupons and bonds were valid and subsisting obligations. All those sued upon were in the physical possession of the petitioners in this case. They had been delivered, and under the Negotiable Instruments Act, the title in the petitioners as bearers resulted from the mere delivery to them. Under thse circumstances, it seems to us that Section 37, Judicial Code, which is Paragraph 80, of Title 28, Ann. Code, in no event has any controlling effect. All of the bonds are payable to bearer, and the delivery of them to the committee for the numerous purposes comprehended in the contract would seem to us to put such title in them, regardless of the question of assignment, as to authorize the maintenance of suit in the federal court.

In this connection we quote from the Town of Thompson vs. Perrine, 106 U. S. 589, 27 L. Ed. 299, as follows:

"* * * apart from any consideration of the question as to the negotiability, according to the law of merchant, of these coupons, Perrine is not an assignee within the meaning of the Act of 1875, nor of the previous statutes relating to the same subject. Giving the words, assignee and assignment, their broadest signification and conceding that, in some cases the holder of a promissory note may become such in virtue alone of an assignment; yet, according to the established construction of the Judiciary Acts of 1789, the right of the holder of a promissory note or bond, payable to a particular person or bearer, to sue in his own name, did not depend upon the citizenship of the named payee or of the first or any previous holder; this, because in all such cases, the title passed by delivery and not in virtue of any assignment. In Bullard v. Bell, 1 Mason, 243, Mr. Justice Story said that to bring a case within the exception contained in the 11th Section of the Act of 1789, 'The action must not only be founded on a chose in action, but it must be assignable; and the plaintiff must sue in virtue of an assignment.' A 'note,' said he, 'payable to bearer, is often said to be assignable by delivery, but in correct language, there is no assignment in the case. It passes by mere delivery; and the holder never takes any title by or through any assignment, but claims merely as bearer. The note is an original promise by the maker to pay any person who shall become the bearer; it is, therefore, payable to any person who successively holds the note bona fide not by virtue of any assignment of the promise, but

by an original and direct promise, moving from the maker to the bearer'. In Bank v. Wister, 2 Pet. 326, the court said that it had 'Uniformly held that a note payable to bearer is payable to anybody, and is not affected by the disabilities (to sue) of the nominal payee.' Thompson v. Lee Co., 3 Wall 331 (70 U. S. XVIII 178); Bushnell v. Kennedy, 9 Wall 391 (76 U. S. XIX 738); Lexington v. Butler, 14 Wall 293 (U. S. XX 812); Cooper v. Thompson, 13 Blatchf (434); Coe v. R. R. Co., 19 Blatchf 522.

"The coupons here in suit are payable to the holder thereof, and, upon the authority of the adjudged cases, Perrine is not an assignee within the meaning of the Act of 1875 (18 Stat. at L. 470). He is entitled to sue without reference to the citizenship of any previous holder."

Waite v. Santa Cruz, supra: In this case, the court, on page 567 of 46 L. Ed. quotes the Act embraced in Par. 80 of Title 28, and then propounds the question, 'Does the present case come within this provision of the Act of 1875 in respect of any cause of action embraced in it? It does not, if the only objection to the jurisdiction of the circuit court is that the plaintiff was invested with the legal title to the bonds and coupons, simply for the purpose of collection, but if the transfer was made for the purpose, in any way, of creating a case cognizable in the circuit court, of which it could not otherwise have taken cognizance, then the duty of this court is to take notice of that effect and give effect to the statute of 1875."

On the same page the court quotes the case of Williams v. Nottawa, 104 U. S. 209, 26 L. Ed. 719, to the effect that since the enactment of the statute the courts of the United States cannot entertain a suit upon bonds payable to bearer, the real owners of which have transferred them to the plaintiff of record for the *sole purpose* of suing thereon in the courts of the United States for the benefit of the owners who could not themselves sue in such courts. The court there found that the plaintiff did not own the bonds or coupons in suit but held them for collection only, which circumstance rendered the court without jurisdiction. The court expressly states that if the legal title to the bonds and coupons was put in the plaintiff simply for purposes of collection, then the statute has no application and does not exclude jurisdiction. The court in the next sentence then states that if the transfer was made in any way for the purpose of creating a case cognizable in the circuit court, then the court is without jurisdiction, and further on in the opinion the court expressly states that the bonds and coupons being placed in the hands of the plaintiff only for collection, the federal court is without jurisdiction to render any judgment.

The record in that case, according to the opinion of this Honorable Court, showed beyond any doubt that the plaintiff included in his suit a large number of claims owned by others than himself, but each by reason of their

respective small amounts, could not have been sued on separately in the United States District court by their real owners, who had put them into the plaintiff's hands for collection. The court stated that unless it either appeared from the pleadings or from the record that the court was without jurisdiction, jurisdiction would be sustained.

The contract under which the plaintiffs proceed, it seems to us, certainly excludes the idea that the transfer was made for the sole purpose of creating a jurisdiction in the federal courts. The contract certainly has the effect of depositing the legal title in the plaintiffs for purposes different and distinct from the mere purpose of maintaining a suit in a federal court. The contract as a whole reflects a purpose to make a settlement and adjustment and otherwise protect the rights of the bondholders. Section 13 authorizes the plaintiffs to prepare and adopt plans for refinancing, readjustment, liquidation, and settlement, of all the bonds and other obligations of the city embraced in the bonds and coupons. Therefore, if the courts mean to say that it is only when the sole purpose of the transfer is to create federal jurisdiction that the suit will be dismissed, then it seems to us that the terms of this contract are such as to eliminate plaintiffs from the effect of the statute, and to furnish no basis for dismissal of the suit on the theory of collusion to confer federal jurisdiction.

Lake County v. Dudley, supra: The jurisdiction of the court was attacked in this case on the ground that the transfer of certain coupons was made to Dudley collusively and to put the apparent title in him merely to make a case cognizable by the Federal court on the ground of diverse citizenship. Dudley's deposition was taken, and this deposition revealed that the transfer was made to him for the sole purpose of creating a case cognizable before the Federal courts. The court stated that it was certain that he did not own any of the coupons sued upon and that his name, without his consent, was used in order that the United States Courts might acquire jurisdiction and render judgment for the amount of all the coupons in suit, a large number of which were owned by citizens of Colorado, which was the residence of the county which issued the bonds. The court expressly states that the apparent title was put in Dudley without his knowledge and without his consent, and only that he might represent the interests of the real owners, and his name being used merely for their benefit under a collusive and simulated transfer, a fraud was perpetrated upon the jurisdiction of the court, which required the dismissal of the suit.

Inhabitants of Bernard's, etc. vs. Township of Stebbins, 108 U. S. 341, 21 L. Ed. 959. In this case a citizen of New York sought to maintain a suit upon coupons aggregating $18,600 owned by citizens of New Jersey. In these

circumstances the court held that the plaintiff could not maintain the suit as to the $18,600 worth of coupons owned by citizens of New Jersey, their residence being the same as that of the township, and that the suit so far as this sum was concerned embraced coupons in fact owned by citizens of New Jersey, and should have been dismissed. The court found from the record as a positive fact, and states in the opinion, that the transfer was made for the sole purpose of suit in the federal courts.

We do not believe that an analysis of the contract under which these petitioners assert title to the bonds can fairly reveal such an analogy to these cases as to bring it within the rule they enunciate. We stand clearly upon the contract. We can assert no title which it itself contradicts. But when the bonds and coupons were delivered to the petitioners under this contract it seems to us that the result of the transaction in each instance was to put title in the petitioners. There is nothing on the face of the contract in the nature of facts to establish that it was a mere subterfuge for the purpose of invoking the jurisdiction of the United States Courts. It incontestably appears from the face of the instrument that the arrangement was made to afford a means to handle and dispose of the bonds and coupons expeditiously and to the best advantage of the original owners, and to give the plaintiffs such power, control and title as to permit them to work out a refinancing scheme and avoid the incon-

veniences incidental to control of the bonds in numerous hands of different owners. This being true, it seems to us that under these very decisions, when properly analyzed, the courts ought to take jurisdiction.

All the decisions have the ultimate meaning that the purpose of the transfer must be solely to give jurisdiction to the federal courts. If this is only one of the purposes, and there are other bona fide purposes involved in the transfer of title, then such transactions do not constitute a collusion or fraudulent conspiracy to invoke the jurisdiction of the federal courts. This is the understanding we derive from all of the decisions.

All of the instruments involvd in this suit are in the hands of the plaintiffs as holders in due course. They are payable to bearer and they passed by mere delivery. The proof shows without any conflict that all of them were transferred to the plaintiffs by citizens of states other than Texas.

> "The restriction as to suits by assignees, and as to amount in controversy, are distinct and independent. When plaintiff has acquired, in good faith, from citizens of states other than that of which defendant is a citizen, claims amounting in the aggregate to the jurisdictional amount, he has a right to sue on all of such claims in one action in a federal court, although no one of the claims amounted to the jurisdictional amount. The requisite amount and the citizenship necessary to confer jurisdiction

being united in plaintiff, the jurisdiction is not affected by the fact that the several assignors could not have maintained separate suits thereon solely because the claim of each was less than the jurisdictional amount. Hammond v. Cleaveland (C. C. Or. 1885), 23 F. 1; Berheim v. Birnhaum (C. C. Ga. 1887), 30 F. 885; Chase v. Sheldon Roller Mills Co. (C. C. Iowa, 1893), 56 Fed. 625; Davis v. Mills (C. C. Conn., 1900), 99 Fed. 39; Bowden v. Burnham (Kas. 1894), 59 F. 752, C. C. A. 248.

"Despite the rule that the court shall not have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of the assignee unless such suit might have been prosecuted in such court, if no assignment or transfer had been made, several claims assigned by different owners, all of whom were citizens of other states than that of defendant, may be united to give the jurisdictional amount. Bergman v. Inman, Poulsen & Co. (C. C. Or. 1898), 91 F. 293; Davis v. Mills (C. C. Conn. 1900), 99 F. 39; Brigham-Hopkins Co. v. Cross (C. C. Wash. 1901), 107 F. 769.

"Action may be maintained by an assignee of several claims each less, but aggregating more, than the jurisdictional amount; the assignors having been citizens of states other than that of defendant. Davis v. Mills (C. C. Conn. 1900), 99 F. 39."

The debt being payable to bearer and having been made by a corporation, the plaintiffs as transferees may

recover in the federal court whether or not their transferors could have done so. It is to be borne in mind in this connection that the record is barren of any proof that any particular transferor to the plaintiffs held bonds and coupons in an amount less than the jurisdictional amount of the federal courts.

Independent School Dist. v. Rew, 111 Fed. 1, and cases therein cited on page 4.

Scott County v. Advance Rumley Thresher Co., 288 Fed. 742, 743.

Village of Kent v. Dana, 100 Fed. 57.

THE CONTRACT WAS AN EXPRESS TRUST DEPOSITING TITLE IN THE COMMITTEE FOR STATED PURPOSES

The agreement contains every element essential to the creation of an express trust. Although the petitioners are not specifically named as Trustees, they are clothed with all the powers, rights, duties, and responsibilities of Trustees. There is a clear and explicit transfer to them of the legal title. The object and purpose of the trust is set out. The fund and property transferred are definitely named. The bondholders are the beneficiaries.

The defendant as well as the trial court treated the agreement as a trusteeship.

The features which distinguish a trust relation from

one of agency characterize the deposit agreement. This court in Taylor v. Mayo, 101 U. S. 330, 28 L. Ed. 163, defines a trustee as a person in whom some estate, interest or power in or affecting property is vested for the benefit of another. Here the title and interest of the bondholders were vested in the petitioners for the benefit of the bondholders, and certain definite powers and authority were expressly set forth as being reposed in the petitioners to be exercised in behalf of all the bondholders who deposited their bonds and coupons under the terms of the agreement. Thus a trust is raised by the terms of the contract between the petitioners and the accepting bondholders. The purpose and scope of the trust are definitely marked. A trustee of an express trust to whom legal title is transferred may maintain an action thereon in his own name. Under the terms of the agreement between the depositing bondholders and the petitioners, the petitioners alone can exercise any dominion or control over the bonds or assert any right, either out of or in court. It is the relation which the trustee bears to the subject matter of the suit, and not that of the beneficiaries under the trust, which determines jurisdiction. Kokusi Kisen Kabushiki Kaisha v. Argos Merc. Corporation, 280 Fed. 700 (Certiorari denied).

That a trust relation is created under the contract involved in this case is established by the effect of the following cases:

Fuller v. Venable, 118 Fed. 553.

Parker v. New England Oil Corp., 8 Fed. (2) 392.

The petitioners are made trustees of an express trust by all the essential terms of the deposit agreement, and as such trustees may maintain this action in their own names and rights.

Dodge v. Tulleys, 144 U. S. 451, 36 L. Ed. 501.

Susquehanna & Wyo. R. R. Co. v. Blatchford, 11 Wall, 172, 20 L. Ed. 179.

Newhouse v. First Natl. Bank of Chicago, 13 F. (2d) 887.

Smith v. Bell, 217 F. 243.

Shipp v. Williams, 62 F. 4.

Morris v. Lindaner, 54 F. 23.

From the case of Dodge v. Tulleys, supra, we quote the following pertinent excerpt:

"Another defect claimed is that the citizenship of Hesse, the obligee in the bond, is not alleged; but this is unnecessary. The suit is in the name of Tulleys, trustee, to whom the legal title was conveyed in trust, and who was, therefore, the proper party in whose name to bring suit for foreclosure. It happens in this case that there was but one party beneficiary under the trust deed; but it often is the case, as in railroad trust deeds, that the bene-

ficiaries are many. But whether one or many, the trustee represents them all, and in his name the litigation is generally and properly carried on. The fact that a beneficiary in a trust deed may be a citizen of the same State as the grantor, would not, if the trustee is a citizen of a different state, defeat the jurisdiction of the Federal Court."

This record reflects a situation in which a municipality in Texas has issued and sold its bonds to numerous citizens of other states. It has defaulted upon those obligations. The holders of those obligations have selected and constituted a committee as nothing less nor more than trustee to take charge of and handle for all of the parties thus interested the obligations of the municipality. The committee as Trustees for such bondholders are clothed with various and sundry rights and powers which encompass far more than the idea of mere litigation.

An unbiased reading of the deposit agreement does not suggest, we think, the idea that it involves a collusive undertaking to circumvent the federal jurisdiction statute. It reflects a situation in which the City of Cisco has become the debtor of numerous nonresidents of Texas through the sale of its bonds. The conclusion is derivable from it (and such conclusion was derived by the trial judge) that these holders of bonds are numerous and far scattered. They have a common interest in salvaging their investment. They resort to what has become a common thing, and in reality the only practical means

of dealing with such a situation, that is, to pool their interests and thereby render it possible for a small number of people to deal with the situation and undertake to solve its difficulties. In this instance the plaintiffs themselves were the owners of some of the bonds before the contract was made. They proposed to other bondholders the transfer of their bonds and coupons to them. In response to this proposition more than two million dollars worth of the bonds held by widely scattered owners were transferred to them. Dominion and ownership over these bonds and coupons were reposed in them so that they in their discretion might deal with such bonds and coupons in any way that might achieve a specific adjustment through refinancing, composition, trades and other transactions, as well as through resort to litigation.

In these circumstances, we submit that it is a harsh and extreme construction of the Collusive Act Provision to deny to these citizens of the United States, who are not citizens of Texas, the right to their day in a federal court on the unsustained theory that the plaintiffs are mere collectors and that there is no good faith in the transfer and delivery of the bonds and coupons to them, or in the terms and provisions of the contract in connection with which they received title to the bonds and coupons. Certainly the court should have definite proof rather than personal opinion to sustain such position, and all the proof in the record including the very nature of the deposit agreement refutes that position.

We respectfully submit that upon the foregoing considerations and upon those embraced in the petition for certiorari, the writ should be granted.

Respectfully submitted,

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FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1899

No. 10.

CHARLES P. BULLARD ET AL., Petitioners,

vs.

CITY OF CISCO, TEXAS, Defendant.

REPLY BRIEF OF THE DEFENDANTS IN ERROR.

J. J. Byrne,
S. D. Wagnon,
Attorneys for Defendants,
Cisco, Texas.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1932

No. 37471

CHARLES P. BULLARD, et al,
Petitioners

vs.

CITY OF CISCO, TEXAS,
Defendant

REPLY BRIEF OF THE DEFENDANTS-IN-ERROR

To the Supreme Court of the United States:

NATURE AND RESULT OF THE SUIT

The statement of the nature and result of the suit as made by plaintiffs-in-error is adopted by the defendants-in-error with the additional statement that the defendants raised the question of jurisdiction specifically as shown by Paragraphs No. 2 and 3 of their answer, as follows:

> "2nd. This Court is without jurisdiction to hear and to determine the cause of action sued

upon here, because plaintiffs are not the owners and holders of the bonds sued upon, or any of them. In this connection, defendants respectfully represent and show unto the Court that plaintiffs are not the owners of the bonds sued upon, or any of them; that they paid no valid consideration therefor, but that the bonds and coupons sued upon were delivered to, and are held by, the plaintiffs merely and solely for the purpose of collection, the plaintiffs having no beneficial interest therein whatever, and that the legal title and beneficial ownership is in others whose names are not disclosed and who are not parties plaintiff in this cause, all of which will appear and be made manifest by the contract or agreement by and under which plaintiffs hold said bonds and coupons, a copy of which is hereto attached, marked Exhibit "A," made a part hereof, and reference thereunto made for the tenor, terms, and effect thereof.

"3rd. These defendants further state that they are informed and believe, and being so informed and believing, allege the facts to be, that no one of the holders of bonds or interest coupons that are now due hold coupons or bonds in an amount sufficient to give this Court jurisdiction, or in the event that any one or more of the true owners and holders of said bonds and coupons that are now due, hold coupons or bonds in an

amount sufficient to give this Court jurisdiction, then numerous owners and holders of bonds do not have or hold an amount sufficient to give this Court jurisdiction of their claims. These defendants are not fully advised as to the names and residences of the holders and true owners of said bonds, or the amount of bonds and interest coupons held by by any or all of them, but state that the plaintiffs have full information with reference to the names and places of residence of the true holders of said bonds and the amount of bonds and interest coupons now due, held by each of the true owners, and in order that all parties may be fully protected in these matters, and in order that this Court may fully determine whether or not it has jurisdiction, these defendants pray that plaintiffs be required to answer under oath the names and residences of the true holders and owners of said bonds, who have delivered said bonds to plaintiffs for collection, pursuant to the trust agreement as shown by copy attached hereto, and the amount of the bonds and coupons past due now held by each." (Tr. p. 17-18)

FIRST COUNTER PROPOSITION TO ALL POINTS OF PLAINTIFFS-IN-ERROR

A party who has no legal title to municipal bonds cannot maintain an action thereon in the Federal Courts of the United States.

SECOND COUNTER PROPOSITION TO PLAINTIFFS-IN ERROR FIVE POINTS

Where two or more plaintiffs have separate and distinct demands, it is essential that the demand of each be of the requisite jurisdiction or amount.

THIRD COUNTER PROPOSITION

The question as to jurisdiction is deemed to be an issue where the defendants aver in their answer that they have no knowledge or information as to such citizenship and would leave plaintiff to proof thereof, which form of denial under the State practice raises the issue.

FOURTH COUNTER PROPOSITION

The objection that a Federal District Court was without jurisdiction to entertain a suit may be taken by answer

STATEMENT UNDER FIRST COUNTER PROPOSITION

The deposit agreement introduced in evidence by agreement of parties (Tr. p. 75—copied Tr. p. 21-37) shows conclusively that the plaintiffs Bullard, et al, were not the legal or equitable owners and holders of the bonds sued on in this cause but were only acting as agents.

The plaintiff Charles P. Bullard testified by deposition (Tr. p. 76) that he had no knowledge as to the names of the persons, firms or corporations from whom the transferrors of the title to the bonds to plaintiff acquired said

bonds, the dates they acquired them, the amounts acquired, and the sums of money paid therefor, but that plaintiffs wrote letters to persons, firms, or corporations from whom they acquired title to the bonds described in plaintiffs' bill of complaint requesting that they sign a contract and deliver the title to the bonds they held to the plaintiffs.

To avoid repetition, we refer to the opinion of the Honorable James C. Wilson, Judge of the United States District Court for the Northern District of Texas (Tr. p. 84-96) for a clear and full analysis of the effect of this contract.

The plaintiffs-in-error have fully and carefully analyzed this contract and the entire transaction with a view of showing that the plaintiffs-in-error were the real owners of the bonds, but when the contract as a whole is analyzed, it is readily apparent that they did not own the bonds but were simply employees of the true owners, just as attorneys are employees.

In addition to the many reasons given by the trial court to show that the plaintiffs were not the owners of the bonds in such capacity as would give them the right to sue thereon in the Federal Court, we suggest that there be considered the question of litigation as between the petitioners and the true owners as to the title to the bonds. Consider for instance the situation where a suit might be instituted against one or more of the true owners and a writ of garnishment served on the Bondholders Commit-

tee. They would have to answer that they held these bonds for the true owners subject to such expenses, fees, etc., as might be incurred and contracted for by virtue of their employment. In other words, it is clear that the nominal plaintiffs in this cause were simply employees of the real owners and the entire record is silent as to the names of the true owners and the amount of indebtedness claimed by each.

Plaintiffs-in-error say that if it should be held that the bonds and coupons delivered under the agreement did not constitute a sale, then the agreement constituted a trust agreement between plaintiffs-in-error and depositing bondholders, whereby plaintiffs-in-error hold the legal title to the bonds and coupons under an express trust. This to us is a strikingly novel proposition. In all the text books and decisions on the question of express trusts which we have read, the settler creates the trust and names the trustee, defining the powers and the purpose of the trust, but here, according to the theory of plaintiff-in-error, they constituted themselves trustee of an express trust of property in which they had no right, title, or interest, and invited the cestui que trust to become parties. This contention is not supported by the agreement for by its terms and provisions plaintiffs-in-error are nothing more than collecting agents with the right to retain compensation for services rendered and expenses incurred out of the proceeds of bonds and coupons that may be collected.

If plaintiffs-in-error are the legal owners of the bonds and coupons sued upon, why the necessity of excluding

nonparticipating bondholders from sharing in the rights thereunder? Why provide that registered holders of certificates issued to depositors by the committee should be deemed for all purposes to be the absolute owners of the bonds and coupons described therein? Why authorize the committee to collect and receive all moneys due and payable on the bonds? Why provide that the depositors of the bonds and coupons should not be personally liable for compensation to the committee or for expenses incurred by it? Why provide for compensation for services of the Committee? Why give the bondholders the right to dissent from any new plans proposed by the committee and the right to withdraw their bonds and coupons? Why give the committee the right to increase the number of members thereof? Why give the committee and others the right to become interested in any property which may become subject to the Committee? Why give to the committee the right to borrow and to hypothecate the bonds and coupons as collateral security for the payment of the loans? The only answer is that the title to the bonds never passed out of the owners, and that the committee acquired no title thereto. In other words, the agreement meant what it said—that owners of certificates issued by the committee "Shall be deemed for all purposes to be the absolute owners thereof and the bonds and coupons therein referred to."

That a party who has no legal title to municipal bonds cannot maintain an action thereon in the Federal Courts is well and finally settled by the decisions of the U. S. Su-

preme Court. (Williams vs. Notawa Twp. 102 U. S. 209, 26 L. Ed. 719 Woodside vs. Beckham, 216 U. S. 112, 54 L. Ed. 408; New Providence Twp. vs. Halsley, 117 U. S. 336, 29 L. Ed. 114; Lake County v. Dudley, 192 U.S. 243, 43 L. Ed 684; Jones vs. Lee, 18 How 76, 15 L. Ed. 263; House vs. Mullins, 22 Wall 42, 22 L. Ed. 838; Barnards Twp. vs. Stebbins, 109 U. S. 341, 27 L. Ed. 956; Pinnell vs. Pinnell, 240 U. S. 594, 60 L. Ed. 817.)

Section 80 of Title 28, U. S. C. A. (Judicial Code, Section 37) provides as follows:

"If any suit commenced in a district court or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require and shall make such order as to costs as shall be just. (Mar. 3, 1875, c. 137, Sec. 5, 18 Stat. 472; Mar. 3, 1887, c. 373, Sec. 6, 24 Stat. 555;

Aug. 13, 1888, c. 866, Sec. 6, 25 Stat. 436; Mar. 3, 1911, c. 231, Sec. 37, 36 Stat. 1098.)

It is to be noted that the Act provides that if at any time the court finds that "such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court . . . . the said district court shall proceed no further therein, but shall dismiss the suit," and therefore covers any case where it is deemed that the actual parties in interest do not have a case properly within the jurisdiction of the court, as well as where the "parties to said suit have been improperly or collusively made or joined."

The above provision of the Judicial Code came under consideration in the Supreme Court for the first time in a case involving bearer bonds of a municipal corporation. (Williams vs. Nottawa, 104 U. S. 209.) The facts in the case are stated by Chief Justice Waite, as follows:

> "This suit was brought by Williams, a citizen of Indiana, against the township of Nottawa, a municipal corporation of Michigan, to recover the amount alleged to be due on certain of its bonds, negotiable by the law merchant, and payable to Samuel Kline, or bearer. A trial was had by a jury, which resulted in a verdict, by the direction of the court, in favor of Williams for six of the bonds, and in favor of the township for the remainder. This writ of error has been brought by

Williams to reverse the judgment against him; and, as the court directed the verdict which was rendered, the whole of the evidence has been embodied in the bill of exception, and is properly before us for consideration.

"From the testimony of Williams himself, it distinctly appears he was personally the owner of only three of the bonds sued on of $100.00 each. One Bracey Tobey was the owner of three others of the same amount. The judgment in favor of Williams was upon these six bonds, and for $994.57 only. All the other bonds being those on which the judgment was rendered in favor of the township, were owned by Samuel Kline and William Conner, both of whom were residents of the township and citizens of Michigan when the bonds were issued. There is no evidence of any change of citizenship of Kline since the bonds were delivered, and Conner, who was a witness at the trial, testified that he continued to be a citizen of Michigan. The bonds were transferred by Kline and Connor to Williams simply for the purpose of collection with his own. The same is true of those belonging to Tobey, but there is nothing in the evidence to show of what State he was a citizen, though he testified that he bought his bonds in Michigan."

After stating the facts as above, the court cited and quoted the above section of the Judicial Code, and said:

"This case, so far as the bonds owned by Kline and Connor are concerned, comes clearly within this prohibition. As the actual owners of the bonds were citizens of Michigan, they could not sue in the courts of the United States, and Williams distinctly testified that he received and held their bonds solely for the purpose of collection with his own, and for their account. It cannot for a moment be doubted that this was done for the "purpose of creating a case" for Kline and Connor cognizable in the courts of the United States. That being so, it was the duty of the Circuit Court to dismiss the suit as to these bonds and proceed no further; for as to them the controversy was clearly between citizens of the same state, Kline and Connor being the real plaintiffs. The transfer to Williams was colored only, and never intended to change the ownership. This both Williams and Kline and Connor knew."

The court held that the issue of improper parties involving the question of jurisdiction could be raised by the appellees for the first time on appeal in the Supreme Court and that it was the duty of the court to dismiss the case in accordance with the command of the statute.

In the case of Bernards Township vs. Stebbins, 109 U. S. 341, the Supreme Court held that the provisions of the statute and the doctrine of the above case applied to suits in equity as well as in law. In that case the plaintiff had

brought together a large number of bonds, some of which were owned by the citizens of the State in which the suit was brought for the purpose of forcing the Township to place its corporate seal upon them. The plaintiff sued in equity to require the officials to attach the seal. The court decided that the owners of the bonds were entitled to have the seal attached, and that the court of equity would restrain the setting up of the wrongful failure to attach the seal in an action at law. The defendants challenged the right of the plaintiff to maintain the suit. The question was stated by the court as follows:

> "The remaining question argued at the bar is how far the citizenship of the real parties in interest, and the amount of the claims of each, should affect the exercise of jurisdiction and the extent of the decree.
>
> "The position of the plaintiff is, that the bonds and coupons being payable to bearer, they are entitled to sue, at law or in equity, on all the coupons held by them; that the combination of the holders of several claims of moderate amount against the same defendant, for the purpose of diminishing and sharing the expense of litigation, was entirely proper, and should be encouraged by the court; that the bonds and coupons owned as well as held by plaintiffs, and by others not citizens of New Jersey, clearly brought the case within the jurisdiction of the court; and

that to deny to citizens of New Jersey the right to transfer their claims to the plaintiffs for the purpose of collection in the same suit would be to discriminate unjustly between th ecitizens of New Jersey and the citizens of other states."

The question so stated was disposed of by the court in the following language:

"The decision in Williams vs. Nottawa establishes that the Circuit Court of the United States cannot, since the act of 1875, entertain a suit upon municipal bonds payable to bearer, the real owners of which have transferred them to the plaintiffs of record for the sole purpose of suing thereon in the courts of the United States for the benefit of such owners, who could not have sued there in their own names, either by reason of their being citizens of the same State as the defendant, or by reason of the insufficient value of their claims. The principle of that decision is equally applicable to suits in equity to assert equitable rights under such bonds."

In the case of Farmington vs. Pillsbury, 114 U. S. 138, the Supreme Court, in deciding a suit by a nonresident standing in substantially the same position as the Bondholders Committee in the case under consideration, held that he was not a proper party and that the suit instituted by him should be dismissed. The Court said:

"We are already of the opinion that this case falls within the prohibitions of the statutes. The bonds to which the coupons now in suit were attached were all bought as early at 1871 or 1872 by citizens of the State of Maine, who held and owned the bonds themselves when this suit was brought. Their purchases were made while a suit was pending in the courts of the State to test the validity of the bonds. On the 27th of August, 1878, the highest court of the State decided in effect that the bonds were inoperative and void, for want of constitutional power in the village corporation to issue them. Almost two years after this decision these coupons, to the amount of $7,922 were collected from various holders of bonds, all residents of the village of Farmington and citizens of Maine, and transferred, separate from the bonds, to the present plaintiff, a citizen of Massachusetts, under an arrangement by which the plaintiff gave the agent of the holders of the coupons his non-negotiable promissory note for $500, payable in two years from date, with interest and agreed, 'as a further consideration for said coupons', that if he succeeded in collecting the full amount thereof he would pay the agent, as soon as the money was got from the corporation, fifty per cent of the net amount collected above the $500. This suit, begun July 1, 1880, in the name of the plaintiff, is the result of that arrangement. It is a suit for the benefit of the owners of

the bonds. They are to receive from the plaintiff one-half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose.

"The suit is their own in reality, though they have agreed that the plaintiff may retain one-half of what he collects for the use of his name and his trouble in collecting. If is true the transaction is called a purchase in the papers that were executed and that the plaintiff gave his note for $500 but the time for payment was put off two years, when it way no doubt, supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay."

In the case of Lake County Commissioners .vs. Dudley, 173 U. S. 243, the Supreme Court, after setting forth the testimony of the plaintiff in the case, in which he testified that the bearer bonds and coupons of the county were transferred to him for the purpose of collection and for the purpose of bringing suit upon them, decided the case in the following language:

"From the evidence in this cause of Dudley himself, it is certain that he does not in fact own

any of the coupons sued on and that his name, with his consent, is used in order that the Circuit Court of the United States may acquire jurisdiction to render judgment for the amount of all the coupons in suit, a large part of which are really owned by citizens of Colorado, who, as between themselves and the Board of Commissioners of Lake County, could not invoke the jurisdiction of the Federal Court, but must have sued, if they sued at all, in one of the courts of Colorado. It is true that some of the coupons in suit are owned by corporations of New Hampshire who could have themselves sued in the Circuit Court of the United States. But if part of the coupons in question could not by reason of the citizenship of the owners have been sued on in that court, except by uniting the causes of action arising thereon with causes of action upon coupons owned by persons or corporations who might have sued in the Circuit Court of the United States, and if all of the causes of action were thus united for the collusive purpose of making 'a case' cognizable by the Federal Court as to every issue made in it, then the act of 1875, must be held to apply, and the trial court on its own motion should have dismissed the case without considering the merits.

"In Williams vs. Nottawa, 104 U. S. 209, 211, this court said that Congress when it passed the act of 1875 extending the jurisdiction of the courts

of the United States was especially careful to guard against the consequences of collusive transfers to make parties, and imposed the duty on the court, on its own motion, without waiting for the parties, to stop all further proceedings and dismiss the suit the moment anything of the kind appeared. This was for the protection of the court as well as the parties against frauds upon its jurisdiction."

The decisions of the Supreme Court clearly announce that a case should be dismissed upon it appearing that jurisdiction is defective, either on account of diversity of citizenship being absent, or, on account of the claims of the true parties in interest not being sufficient as to jurisdictional amount, that is, over $3,000.00.

In the case of Waite vs. Santa Cruz, 184 U. S. 302, the Supreme Court made an analysis of various statutory provisions relating to suits upon assigned claims, and held that the assignment of bearer bonds and coupons attached thereto by a non-resident of the State in which the defendant City was located to the plaintiff, so that the aggregate amount came within the jurisdiction of the court, did not confer jurisdiction unless the claim of each non-resident was sufficient to bring the case within the jurisdiction of the court. On this question the court said:

"Does the record show that the Circuit Court was without jurisdiction of some of the causes of

action embraced by the compaint? We say 'record' because this court will not reverse a judgment for want of jurisdiction in the Circuit Court, if its jurisdiction sufficiently appears either from the pleadings or from the record. Railway Company vs. Ramsey, 22 Wall, 322; Bridges vs. Sperry, 95 U. S. 401; Robertson vs. Cease, 97 U. S. 646, 648. The complaint here shows diverse citizenship, as between the plaintiff and the defendant city, but the record reveals the fact that the plaintiff included in his suit a large number of claims owned by the citizens of States other than California, but which, by reason of their small amount, could not have been sued on separately in the Circuit Court by the persons or corporations, the real owners, who put them in plaintiff's hands for collection.

"Of course there can be no doubt. The entire issue of refunding bonds was 360, of $1,000.00 each, numbered from one to three hundred and sixty. They were of the character known as 'serials', each series consisting of nine bonds. The first series included the bonds numbered from one to nine, both inclusive, and each succeeding series included the nine bonds numbered consecutively after those embraced in the next preceding series. The bonds of the first series fell due April 15, 1895, and were the only bonds that had become due when the present action was brought.

The remaining series were made payable in consecutive order on the 15th of April in each succeeding calendar year thereafter until and including the year 1934. Now, this suit is for the amount due on nine of the forty bonds of $1,000 each, constituting the first series, and falling due April 15, 1895, and two hundred and eighty-two coupons of $50 each, all of which coupons, above the coupon of Bond No. 40 of the first series, were attached to the bonds that were not yet due. No owner of a $50 coupon attached to a bond not due could have sued upon it in the Circuit Court. Each coupon of that amount was a complete instrument, capable of supporting a separate action, in the proper forum, without reference to the maturity or ownership of the bonds to which they were attached. Koshkonong vs. Burton, 104 U. S. 668, and authorities there cited; Elgin vs. Marshall, 106 U. S. 578. No owner of coupons, aggregating less than $2,000, could have sued in the Circuit Court by reason of the bonds to which they were attached, (but which were not due), exceeding the jurisdictional amount. But when the several owners of $50.00 coupons which were due, put them all in the hands of the plaintiff for collection, the amount appeared to be sufficient for purposes of jurisdiction. Thus a case was made by which the Circuit Court was led to take cognizance of certain claims too small for its jurisdiction if they had been severally sued on

by the real owners, although there was jurisdiction as to the parties who owned eight of the nine bonds in suit. It also appears that one of the transferrers of the plaintiff owned only one bond of $1,000. The value of the matter in dispute, as to him, was only the amount of that one bond and one coupon of $50.

"We adjudge that, as the plaintiff does not own the bonds or coupons in suit, but holds them for collection only, the Circuit Court was without jurisdiction to render judgment upon any claim or claims, whether bonds or coupons, held by a single person, firm, or corporation against the city, and which, considered apart from the claim or claims of other owners, could not have been sued on by the real owner by reason of the insufficiency of the amount of such claim or claims."

The jurisdiction of the Federal Court must affirmatively appear on the face of the record, and unless jurisdiction does so appear, the court must dismiss the case. (Continental Life Ins. Co. vs. Rhoads, 119 U. S. 237, 30 L. Ed. 380; Kinney vs. Columbia Savings & Loan Ass'n., 191 U. S. 78, 48 L. Ed. 103; Fishback vs. W. U. Te. Co. 161, U. S. 96, 40 L. Ed. 103; Johnson vs. Christian, 125 U. S. 642, 31 L. Ed. 820; Thomas vs. Board of Trustees, 195 U. S. 207, 49 L. Ed. 160.)

STATEMENT, ARGUMENT, AND AUTHORITIES UNDER SECOND COUNTER PROPOSITION

The plaintiffs allege in their petition: "Plaintiffs are the owners of and hold title to various and sundry of said bonds and interest coupons thereon, including the following." (Tr. p. 8.) The defendants challenged this ownership and plead that: "No one of the holders of bonds or interest coupons that are now due hold coupons or bonds in an amount sufficient to give this court jurisdiction, or in the event that any one or more of the true owners and holders of said bonds and coupons that are now due hold coupons or bonds in an amount sufficient to give this court jurisdiction, then numerous owners and holders of bonds do not have or hold bonds in an amount sufficient to give this court jurisdiction of their claims. (Defendants' Answer, Tr. p. 17-18. This answer was verified.)

The Supreme Court of the United States has repeatedly held in effect that when two or more plaintiffs have separate and distinct demands united for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount, but where several plaintiffs united to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount.

AUTHORITIES

Fishback vs. W. U. Tel. Co. 161 U. S. 96, 16 Sup. Ct. Rep. 506; 40 L. Ed. 630.

Citizens Bank vs. Cannon, 164 U. S. 319; 17 Sup. Ct. Rep. 89; 41 L. Ed. 451.

Wheless vs. St. Louis, 180 U. S. 379, 21 Sup. Ct. Rep. 402; 45 L. Ed. 583.

Troy Bank vs. G. A. Whitehead & Co. 222 U. S. 39; 32 Sup. Ct. Rep. 9; 56 L. Ed. 81.

Pinnel vs. Pinnel, 240 U. S. 594; 36 Sup Ct. Rep. 416; 60 L. Ed. 817.

Walter vs. Northeastern Railway Co. 147 U. S. 370; 13 Sup. Ct. Rep. 348; 37 L. Ed. 206.

Scott vs. Fowler, 253 U. S. 243; 40 Sup. Ct. Rep. 503; 64 L. Ed. 883.

It should be borne in mind that as the plaintiffs had alleged that they were the owners of the bonds without any qualifying statement, then the character of their rights could not be raised by a demurrer or motion to dismiss. This ownership was denied under oath and it was particularly plead in the verified answer that the true owners, or many of them, did not hold matured bonds or coupons in an amount sufficient to confer jurisdiction on the Federal Court.

STATEMENT, ARGUMENT, AND AUTHORITIES UNDER THIRD COUNTER PROPOSITION

When there is a special denial under oath of any particular matter or fact, the plaintiff is charged with the burden of proving all essential facts, including facts showing jurisdiction, particularly in a court of limited jurisdiction.

AUTHORITIES

Gilbert vs. David, 235 U. S. 561, 59 L. Ed. 361.

Continental Life Ins. Co. vs. Rhoads, 119 U. S. 237; 30 L. Ed. 380.

Kinney vs. Columbia Savings & Loan Ass'n. 191 U. S. 78; 48 L. Ed. 103; Fishback vs. W. U. Tel. Co. 161 U. S. 96; 40 L. Ed. 630.

Johnson vs. Christian, 125 U. S. 642, 31 L. Ed. 820.

Thomas vs. Board of Trustees, 195 U. S. 207; 49 L. Ed. 160.

STATEMENT, ARGUMENT, AND AUTHORITIES UNDER FOURTH COUNTER PROPOSITION

Plaintiffs having alleged absolute ownership of all of the bonds in controversy without any qualification, and the defendants being unable to raise this question by demurrer or exception, defendants properly raised the question by verified answer, particularly denying the owner-

ship of bonds and alleging that the true owners did not have bonds in an amount sufficient to confer jurisdiction as to their particular claims, and praying that plaintiffs be required to answer under oath the names of the true owners of the bonds and the amount held by each.

The trust indenture introduced in evidence by agreement showed that the plaintiffs in this cause were only collecting agents, the true owners of the bonds being unknown

Certainly it would have been easy for the plaintiffs to have stated the names of the true owners of the bonds, or their principals, and to have given the amount held by each. The fact that plaintiffs-in-error proved that only four of the owners of the bonds aggregating $3,000.00 each certainly would have been sufficient to justify the Trial Court in affirmatively holding that no other owners of the bonds held bonds or coupons in excess of $3,000.00.

As is stated by the Citcuit Court of Appeals, there was no evidence tending to prove that any of such owners, except four, owned past due bonds or coupons sufficient in amount to give the court jurisdiction of a suit thereon, and that the record failed to show that the past due bonds or coupons owned by any owners except four were sufficient in amount to enable the real owners to sue thereon.

As is shown by the opinion of the trial court, upon the presentation of the pleadings, since there was an allegation of ownership the court retained jurisdiction to hear

the evidence but at the conclusion of the evidence, and when the plaintiffs had wholly failed to show the true owners of the bonds and the amount thereof, although they were requested to do so by the pleadings on file, then plaintiffs had wholly failed to discharge the burden placed on them and the court had the right to conclude as an affirmative matter that the owners, other than the four named by plaintiffs, did not have bonds in amounts sufficient to confer jurisdiction on the Federal Court.

AUTHORITIES

North Pacific Steamship Co. vs. Soley, 257 U. S. 215; 66 L. Ed. 203.

Riggs vs. Traders Co. 145 Fed. 254.

Penn Co. vs. Bay, 138 Fed. 203.

Plaintiffs-in-error ably and plausibly contend that since it is not shown that the transfer to the plaintiffs-in-error was not in good faith or for the sole purpose of conferring jurisdiction, that the Federal Court should have retained jurisdiction. They lose sight of the main issue which is not the cause or purpose of the transfer but is the result or effect thereof.

In all of the cases cited by plaintiffs-in-error there was a transfer where the title actually passed to, and became vested in, plaintiffs. In this case there was no actual transfer or a passing of title but only the granting of an agency.

The mere fact of delivery would not estop the defendants from showing, as was done in this case, the true purpose of the transfer or the ultimate effect thereof.

As was stated by the learned trial court, the instrument as a whole was considered, and when it was considered as a whole, it shows in fact no actual transfer so as to enable plaintiffs-in-error to maintain a suit in the Federal Court.

DEFENDANTS'-IN-ERROR INDEPENDENT COUNTER PROPOSITION

The District Court dismissed the case as a whole, giving as reason therefor that although four bondholders' holdings each exceeded $3,000.00, under the state of record all must be dismissed because the claims of the parties are not separated or segregated in the evidence in any way and could not be identified, and in view of the whole situation it was his opinion that the case in its entirety should be dismissed. (Tr. p. 96.)

The Circuit Court of Appeals reversed the judgment of the trial court on the ground that before dismissing the suit in so far as the claims based on the bonds and coupons held by the four bondholders owning bonds and coupons in excess of $3,000.00, the Court's discretion would have been properly exercised by affording a further opportunity to make clear proof of claims asserted by the suit and already shown to be within the court's jurisdiction. (Tr. p. 103-104.)

We respectfully submit that the trial court was correct and the Circuit Court of Appeals in error in this for the reason that plaintiffs-in-error had had ample opportunity to make this proof and did not do so. There was no evidence introduced which would show the amount that these four bondholders should recover, and even after the trial court had rendered its opinion, the record is silent as to any effort on the part of plaintiffs-in-error to offer this proof.

As is stated in the case of Eliza S. House vs. Andrew Mullin, 89 U. S. 43, 22 L. Ed. 839, where a demurrer was sustained and counsel did not amend, the bill was properly dismissed as the presumption must be that no leave to amend was asked.

The defendants had alleged that all, and if not all, then many of the bond owners did not have bonds or coupons in an amount sufficient to confer jurisdiction, and the plaintiffs-in-error at no time prior to or during the trial particularly plead the amount owned by each, or did they offer to prove the amount owned by each one of the four whom they contended held bonds in excess of $3,000.

We therefore respectfully submit that the judgment of the Circuit Court of Appeals should be reversed and the judgment of the trial court be affirmed, or that the judgment of the Circuit Court of Appeals should be affirmed.

BUTTS & WRIGHT

By _____
Of Counsel
Attorneys for Defendants-in-error.

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In The

SUPREME COURT OF THE UNITED STATES

No. 37471

CHARLES P. BULLARD, et al
Petitioners

vs.

CITY OF CISCO, TEXAS
Defendant

MOTION for REHEARING of DEFENDANTS-IN-ERROR

BUTTS & WRIGHT
Attorneys for Defendant
Cisco, Texas

In The

SUPREME COURT OF THE UNITED STATES

No. 37471

CHARLES P. BULLARD, et al
Petitioners

vs.

CITY OF CISCO, TEXAS
Defendant

MOTION for REHEARING of DEFENDANTS-IN-ERROR

Now comes the City of Cisco, defendant-in-error in the above numbered and entitled cause and moves and prays the court to set aside the order and judgment heretofore rendered in this cause on December 4, 1933, and to affirm the judgment of the trial court for the following reasons, to-wit:

FIRST ASSIGNMENT OF ERROR

This court erred in holding that petitioners in error in their individual capacity could maintain this suit in the United States District Court for the reason that the trust agreement created a voluntary unincorporated association which does not have the capacity to sue in the United States District Court.

SECOND ASSIGNMENT OF ERROR

This court erred in holding that petitioners in error could maintain this suit in the United States District Court on claims acquired from a number of individuals or corporations where each claim was separate and distinct and when it was not shown that each, separate and distinct claim was of the jurisdictional amount.

STATEMENT, ARGUMENT AND AUTHORITIES UNDER FIRST ASSIGNMENT OF ERROR

The petitioners in error in thier petition alleged that they were the owners of the bonds. There was no statement in the petition that indicated that they held this in any trust capacity or as representatives of any beneficiary or as members of any association. The trust agreement introduced in evidence shows conclusively that as individuals they had no right, title or interest in the bonds except such interest as they might have to reimburse them as individuals for their fees and expenses. There was in reality clearly an association with proper provisions for the maintenance of the association after the death or resignation of one or more members of the so called "Committee." An analysis of the trust agreement as a whole shows that there was in reality a voluntary unincorporated association which took legal title to the bonds.

Although they alleged ownership in themselves, the verified pleadings and uncontradicted evidence shows in truth and in fact the bonds were owned subject to the rights of the beneficiaries by the so called "Committee."

AUTHORITIES

Moffat Tunnel League vs. United States 77 L. Ed. 1069.

Brown v. United States, 276 U. S. 134, 141, 72 L. Ed. 500, 503.

United Mine Workers v. Coronado Co. 259 U. S. 344, 385, 66 L. Ed. 975.

St. Paul Typothetea vs. Bookbinders Union, 94 Minn. 351, 357, 102 N. E. 725.

Pickett vs. Walsh 192 Mass. 572, 589, 78 N. E. 753, 6 L. R. A. (N.S.) 1067.

Karges Furniture Co. vs. Amalgamated Woodworkers Local Union, 165 Ind. 421, 423, 75 N. E. 877.

Anti-Vice Committee vs. Simon, 161 La. 494, 91 So. 851.

STATEMENT, ARGUMENT AND AUTHORITIES UNDER SECOND ASSIGNMENT OF ERROR

It was shown on the trial of the case that three of the beneficiaries held separate claims exceeding $3,000.00 The record is silent as to whether there were other owners of bonds who deposited them with the committee who had separate and distinct claims exceeding $3,000.00 in amount. It is clear that the original owners of the bonds maintained all rights and equities in and to the bonds subject to the payment of the compensation to be allowed the members of the committee plus their necessary expenses. It is clear that each depositor held his bonds in severalty and

not jointly with any other depositor. Since there was no question at all but that there was not a true sale of the bonds but that the so called "Committee" was acting in a representative capacity, to permit the combination of claims of this character would be to allow the joindure of claims separate and distinct in one suit in the United States Court, when except for the joindure the real owners could not have maintained their suit in Federal Court. This violates the general rule laid down in any number of opinions heretofore rendered.

AUTHORITIES

Fishback v. W. U. Tel. Co. 161 U. S. 96, 16 Sup. Ct. Rep. 506, 40 L. Ed. 630.

Citizens Bank v. Cannon, 164 U. S. 319, 17 Sup. Ct. Rep. 89, 41 L. Ed. 451.

Wheless vs. St. Louis, 180 U. S. 379, 21 Sup. Ct. Rep. 402, 45 L. Ed. 583.

Troy Bank vs. G. A. Whitehead, 222 U. S. 39; 32 Sup. Ct. Rep. 9, 56 L. Ed. 81.

Pinnell vs. Pinnell, 240 U. S. 594; 36 Sup. Ct. Rep. 416, 60 L. Ed. 817.

Walter vs. Northeastern Railway Co. 147 U. S. 370; 13 Sup. Ct. Rep. 348; 37 L. Ed. 206.

Scott v. Fowler, 253 U. S. 243; 40 Sup. Ct. Rep. 503; 64 L. Ed. 883.

Notwithstanding the many provisions in the trust agreement, it is clear that when it is analyzed as a whole

the plaintiffs did not have any personal interest in the bonds but were representing a great many persons and they were not acting as individuals but as members of an association. The association, and not the individual mem-mers thereof, should have been the right party plaintiff and it could not have maintained this suit in the United States District Court.

We respectfully submit that the opinion heretofore rendered should be set aside and the judgment of the trial court affirmed.

Respectfully submitted

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Attorneys for Defendant-in-error.

I, F. D. Wright, attorney for defendant-in-error do hereby certify that the foregoing motion is presented in good faith, and not for delay.

SUPREME COURT OF THE UNITED STATES.

No. 10.—October Term, 1933.

Charles P. Bullard et al., Petitioners,
vs.
City of Cisco, Texas.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[December 4, 1933.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This was an action at law brought in the federal court for the Northern District of Texas against the city of Cisco to recover on bonds and coupons issued by it. The plaintiffs were citizens of States other than Texas—three of New York and one of Ohio. The defendant city was a municipal corporation of Texas.

Of the pleadings it suffices now to say that the plaintiffs in their petition alleged that they were owners and holders of the bonds and coupons sued on, the former aggregating $14,000 and the latter $335,787.50; and that the defendant in its answer challenged the court's jurisdiction by alleging that the plaintiffs were not actual or beneficial owners of the bonds and coupons sued on but held them solely for purposes of collection on behalf of others who severally were the real owners, and none of whom could sue in the federal court because their respective holdings were not in excess of $3,000.

The evidence at the trial, so far as now material, was to the following effect: The city of Cisco in 1902-1928 issued and sold, for considerations duly received, its bonds aggregating a large sum. Attached to the bonds were coupons to be paid from time to time. The bonds and coupons were all negotiable in form and payable to bearer. When this suit was begun the plaintiffs held $2,115,000 of the bonds, $14,000 thereof being past due and unpaid, and held past due and unpaid coupons aggregating $335,787.50. These past due bonds and coupons are the ones in suit and the plaintiffs produced them in evidence.

All of the bonds and coupons held by the plaintiffs were transferred to them by prior holders in conformity with, and for purposes defined in, a bondholders protective agreement of January 3, 1930. The prior holders were all citizens of States other than

Texas; but the extent of their respective holdings so transferred was not shown by the evidence, save as it disclosed that the coupons sued on included $5,403.75 which, with the bonds to which they pertained, were received from George E. Averill, a citizen of Maine; $3,120 which, with the bonds to which they pertained, were received from the Title and Guaranty Trust Company, a corporate citizen of Ohio; and $5,590 which, with the bonds to which they pertained, were received from E. Schier Welch, a citizen of Massachusetts.

The agreement of January 3, 1930, in general outline was much like the usual bondholders' protective agreement. The parties to it were, upon one hand, the plaintiffs, who were called the bondholders committee, and, on the other hand, all holders of bonds or coupons of the city who might thereafter deposit the same under the agreement in the manner provided.

There were introductory recitals that the city had failed to make payments of interest and principal in 1929; that it was desirable that holders of the bonds and coupons should "unite and organize for the protection of their interests"; that this protection could be "accomplished most effectively and with the least expense" through the committee if it were invested "with full power and authority in the premises"; and that the committee had consented to act. Provisions then followed for a depositary which was to act on behalf of the committee and under its direction; for the deposit of bonds and coupons with the depositary by their several holders, the deposit to be such as would transfer to the committee "the complete and absolute title"; and for the issue to each depositor of a certificate of deposit transferable only upon the books of the depositary. Other related provisions declared that the registered holder of any certificate of deposit should be deemed "for all purposes to be the absolute owner thereof and of the bonds and/or coupons therein referred to, and neither the depositary nor the committee shall be affected by any notice to the contrary"; that each depositor should be deemed, by reason of his deposit, to have assented to and agreed to be bound by all provisions of the agreement; that no depositor should have "any right to withdraw any bonds or coupons from deposit" or "to take any separate action" with respect to them after their deposit; and that deposited bonds and coupons "shall not be satisfied or discharged except if and as may be expressuly declared or provided by the committee".

Two paragraphs particularly defining the title and powers which the committee was to have declared:

"Seventh: Every depositor, for himself and not for any other, hereby sells, assigns, transfers and delivers to the Committee, its successors and assigns, each and every bond and coupon deposited hereunder by him, and also all his right, title, interest, property and claim at law, or in equity, by virtue of said bonds and coupons . . . and any and all his claims against the City or any receiver or receivers, or under any receivership of the City,[1] or any of its property, to the end that the Committee, as from time to time constituted, shall be vested with full legal title to all the bonds and coupons deposited hereunder, and to each and every claim based thereon. . . ."

"Eighth: The Committee may, as the owner and holder of the deposited bonds and coupons, demand, collect and receive all moneys due or payable thereon and may take or cause to be taken, or participate in or settle, compromise or discontinue, any actions or proceedings for the collection of any of the bonds or coupons or the protection, enforcement or foreclosure of any legal or equitable lien securing or pertaining to same, including liens arising from the enforcement of taxes, levies, and assessments dedicated, levied or available for the service of the bonds,[1] or for the appointment of a receiver of the City or for any purpose whatsoever. The Committee may give such directions, execute such papers, and do such acts, as the Committee may consider wise or proper in order to preserve or enforce the rights or to advance or serve the interest of the depositors. . . ."

Other paragraphs authorized the committee to purchase, acquire, sell or dispose of any property "which may be or become affected by any such lien, foreclosures, or taxes"; to borrow money for the purpose of making such purchases or acquisitions, discharging liens on property so purchased or acquired, or paying obligations and expenses of the committee, or for any other purpose of the agreement; and "to pledge all or any part of the bonds

[1]The references to a possible receivership for the city and to the enforcement of taxes dedicated to the payment of the bonds have explanation in laws of Texas permitting receiverships for cities in certain situations, and in other laws of that State requiring the governing body of a city before issuing its bonds to "provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of such bonds". Constitution of Texas, Article II, § 5; Baldwin's Texas Statutes, Articles 826, 1024, 1241-1258; City of Cisco charter, article 11, §§ 7, 9, and article 13, § 4; Chapter 46, Texas Gen. Laws of 1929, p. 80 (repealed by Act of March 13, 1931, c. 26, Texas Gen. Laws of 1931, p. 33). And see Bullard v. City of Cisco, 48 Fed. (2d) 212.

and coupons deposited hereunder as collateral security for the payment of any such loan or loans".

There were also provisions relating to "a plan or plans for the refinancing, readjustment, liquidation or settlement of all of the bonds and/or other obligations of said city".[2] By these provisions the committee was authorized to prepare or participate in preparing such a plan and to include therein arrangements (a) for the purchase or acquisition of any properties or securities, the purchase or acquisition of which, in the opinion of the committee, would aid in advancing the interests of the certificate holders, and (b) for the "sale, exchange or disposition" of the "whole or any pro rata part of the deposited bonds and coupons". The plan was to be submitted to the holders of certificates of deposit, and each holder was to be taken as assenting thereto unless within thirty days he dissented in writing. If two thirds assented the committee was to be at liberty either to make the plan operative or to abandon it and submit another. If any plan from which there was a dissent was made operative the committee was required to return to each dissenting certificate holder "the bonds and coupons represented by his certificate", upon the surrender of the certificate and the payment by him of "an amount to be fixed by the committee" —which amount evidently was to be fixed on the basis prescribed in another provision soon to be mentioned.

The agreement further declared that the deposited bonds and coupons and all property purchased or acquired by the committee should be charged with the payment of the compensation, expenses, etc., of the committee; that any member of the committee might become "pecuniarily interested" in any property or matters which might be subject to the agreement or to any plan of readjustment; and that the committee should have authority to construe the agreement, and its construction thereof, made in good faith, should be conclusive and bind the holders of certificates of deposit.

It was also provided that the agreement should not remain in force beyond the period of five years from its date, unless extended by the committee with the consent of the holders of certificates representing a majority in amount of the deposited bonds and

[2]A law of Texas particularly authorizes the governing body of a city to "compromise and fund" its indebtedness and to issue new bonds on the basis of the compromise. Baldwin's Texas Statutes, articles 828-834.

coupons; and that the committee, if considering it expedient, might terminate the agreement at any time by a vote of two thirds of its members and giving notice thereof to the certificate holders.

Upon the termination of the agreement the securities, cash and property held thereunder by the committee were to be distributed by the committee among the certificate holders according to the amount of deposited bonds and coupons represented by their respective certificates, but subject to and upon the condition that each certificate holder should pay his share, as fixed by the committee, of the compensation and expenses of the committee, its counsel, agents and depositary, and of all indebtedness, obligations and liabilities incurred by the committee.

From the evidence here outlined the District Court concluded (a) that under the agreement the committee (the plaintiffs) received the bonds and coupons merely as a collection agency and had no real ownership of them; (b) that of the owners who deposited their bonds and coupons with the committee only three were shown to have severally deposited more than $3,000 of those sued on; and (c) that the particular bonds and coupons received from these three depositors were not in the evidence identified or segregated from the others. The court gave effect to its conclusions by sustaining the challenge to its jurisdiction and dismissing the suit without prejudice.

On an appeal by the plaintiffs, the Circuit Court of Appeals held that under the agreement the committee received and held the legal title to the bonds and coupons simply for purposes of collection and had no beneficial ownership; that the depositing holders remained the beneficial owners; that as to such of the bonds and coupons in suit as could not have been sued on by the beneficial owners, because their respective holdings were not in excess of $3,000, the suit was not within the jurisdiction of the District Court and should have been dismissed; that as to such of the bonds and coupons in suit as could have been sued on by the beneficial owners, because their respective holdings were in excess of $3,000, the suit "was not kept from being one within the court's jurisdiction by the fact that appellants [the committee] were vested with the legal title to those instruments simply for the purpose of collection"; and that, as the coupons in suit included three lots—each of more than $3,000 and apparently susceptible of identification and segregation—which were received from depositing holders who could have sued thereon in the federal

court, it was error to dismiss the suit in its entirety for want of jurisdiction without distinctly according to the plaintiffs an opportunity by evidence to identify and segregate the coupons received in the lots of more than $3,000.

Thus, the Court of Appeals, while in the main approving the District Court's decision of the jurisdictional issue, pronounced its judgment of dismissal erroneous as to a minor part of the coupons sued on. For that error the judgment of the District Court was reversed with a direction for further proceedings conforming to the rulings of the Court of Appeals. 62 F. (2d) 313.

The plaintiffs, insisting that the suit in its entirety was within the District Court's jurisdiction, petitioned for certiorari, which this Court granted.

Under § 41 (1), Title 28, U. S. C.,[4] two things were essential to the jurisdiction of the District Court—one, that the suit be between citizens of different States, and the other that the sum or value in controversy, exclusive of interest and costs, be in excess of $3,000. It was shown and not questioned that the parties—the plaintiffs on the one hand and the defendant on the other—were citizens of different States. The suit was on bonds amounting to $14,000 and coupons amounting to $335,787.50—all payable to bearer, made by the defendant corporation and held by the plaintiffs—and recovery was sought of the full amount of these bonds and coupons. Thus both jurisdictional requisites were apparently present.

But it is urged that a part of that which made for such apparent jurisdiction was not real but colorable only, in that the plaintiffs had no actual ownership of the bonds and coupons sued on, but held them solely for purposes of collection on behalf of others who severally were the actual owners but unable to sue in the federal court since their respective claims were too small to satisfy the jurisdictional requirement. If this were all true the conclusion

[4]Sec. 41. The district courts shall have original jurisdiction as follows:

(1) First. Of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and . . . is between citizens of different States, . . . No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made.

would follow that the suit was not properly within the jurisdiction of the District Court and should have been dismissed under § 80, Title 28, U. S. C.[5]

On the other hand if the transfers whereby the plaintiffs came to hold the bonds and coupons were not merely colorable or simply for purposes of collection, but were real and intended to invest the plaintiffs with the full title, even though in trust for purposes of which the transferrers ultimately would be the chief beneficiaries, it is quite plain that the plaintiffs could sue in the federal court notwithstanding the several transferrers, by reason of their small holdings, may have been unable to do so. With one accord prior decisions of this Court show that the right of a transferee of corporate bonds and coupons, payable to bearer, to sue in a federal court, notwithstanding a disability of his transferrers in that regard, turns on the nature of the transfer—whether it be real or only a colorable device to enable the transferrers, through the favor and name of the transferee, to invoke a federal jurisdiction which they could not invoke in their own right.[6]

We are of opinion that the purpose of the agreement of January 3, 1930, was not to create a mere collection agency, nor to set up a merely colorable device for circumventing restrictions on federal jurisdiction, but to put the bonds and coupons—the owners of which were numerous and widely scattered—into an express trust—to be managed and administered by four trustees—for the purpose of conserving, salvaging and adjusting the investment—

[5] Sec. 80. If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.

As examples of the enforcement of this provision, see Williams *v.* Nottawa, 104 U. S. 209; Bernards Township *v.* Stebbins, 109 U. S. 341, 354-356; Farmington *v.* Pillsbury, 114 U. S. 138, 143-146; Lake County *v.* Dudley, 173 U. S. 243, 252-254; Waite *v.* Santa Cruz, 184 U. S. 302, 325-329; Woodside *v.* Beckham, 216 U. S. 117. And see Crawford *v.* Neal, 144 U. S. 585, 593, Black and White Taxicab Co. *v.* Brown and Yellow Taxicab Co., 276 U. S. 518, 524.

[6] See cases cited in note 5.

the municipal debtor having become financially embarrassed. The depositing owners, or succeeding certificate holders, were to be the *cestuis que trustent* or beneficiaries. The plaintiffs were to be the trustees. Although not called trustees in the agreement, they necessarily had that status by reason of the rights, powers and duties expressly assigned to them. There was a distinct declaration that they should have full title to the deposited bonds and coupons, and this was fortified by other provisions defining the control and power of disposal which the trustees were to have over them.

Counsel for the defendant inquire—If the committee were to be the legal owners of the bonds and coupons, why were they authorized to borrow money and pledge the bonds and coupons for its repayment, as also to do other things which legal owners would be free to do without special authorization. The answer is obvious. The title and authority confided to the persons constituting the committee were confided to them as trustees, and not in their personal right, and there was need for carefully and fully defining the authority, for trustees are not permitted to go beyond such as is given expressly or by necessary implication.

To summarize, we think it apparent from the agreement as a whole that resort to litigation was not the principal thing in mind when it was being made, and that what was intended was to invest the trustees with full title and such discretionary powers as might enable them to effect a helpful adjustment of the situation through refinancing, composition, exchange of securities and other means, including litigation if needed.

As the transfers under which the plaintiffs held the bonds and coupons were made to them as trustees, were real and not simply for purposes of collection, and invested them with the full title they were entitled, by reason of their citizenship and of the amount involved, to bring the suit in the federal court. The beneficiaries were not necessary parties and their citizenship was immaterial.[7]

The judgments of both courts below must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

Judgments reversed.

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[7] Dodge *v.* Tulleys, 144 U. S. 451, 455-456; Coal Company *v.* Blatchford, 11 Wall. 172, 175; Knapp *v.* Railroad Company, 20 Wall. 117, 123-124.